

UNH

STATE OF NEW HAMPSHIRE



ORGANIZATION DAY

December 1, 2004

The Clerk of the Senate, The Honorable Steven J. Winter, called the Senate to order at 10:00 a.m.

The Reverend David P. Jones, Chaplain to the Senate, offered the prayer.

Good morning! Last evening, I was lucky enough to experience the Harlem Boys Choir who sang down the road a little bit. Believe it or not, as I sat there listening to them, I was thinking about you. Always interesting. Here is what I thought about it. Despite all the variety within that group of young men, those fellows make great, great music together. Their sound and their energy moved the entire audience. So I am thinking that what you are going to do here together over the next two years will hopefully have the very same affect on all of us who listen to the music you make. So as you begin this work now, I would encourage you to remember three things that I thought about last night when I was listening to them, but thinking about you. First, the song is what matters, not the performers. So, study the score carefully and don't just sing your own favorite ditties. Second, this choir will make its best and most moving music when the different parts, the sections, create a harmony together rather than a strident cacophony. So sing together. Lastly, this old historic concert hall that we're in, and these fancy chairs that you will be sitting in for a while, were here a long time before you got here, and they will be here a long time after you leave. So please sing carefully. They are just on loan to you from us. So enjoy what you do because you have been privileged to have been chosen for this choir. Let us pray.

Direct this gifted group, Gracious God, that with passion, wisdom and skill they may call forth the very best from one another and from us – for then, their music will change us all, and that would be a very good thing.

Amen

Senator Johnson led the Pledge of Allegiance.

The Clerk of the Senate called the Roll of the Senate for attendance.

There were 24 members present.

OATH OF OFFICE FOR SENATORS

The Honorable Craig R. Benson, Governor of the state of New Hampshire, accompanied by the honorable Governor's Council, having come into the Senate Chamber, will now subscribe the oaths of office and witness the signing of the oath by each individual Senator, and verify that these are duly qualified as Senators agreeably to the provisions of the constitution. Craig R. Benson, Governor of the state of New Hampshire.

GOVERNOR CRAIG R. BENSON: Good morning. Good morning, Mr. Senate President. I am here with my fellow councilors to administer your oath of office. I want to say before I start, that I have enjoyed serving with those of you that have been here before and, for those of you newly elected, welcome and congratulations.

On behalf of the Executive Council, I would like to swear in the honorable Senate.

I will ask each of you raise your right hand. I will then ask each of you to repeat after me, but for two places. One, I will say, "I", and you will say your name. Then I will say "of" and you will say where you are from. New Hampshire is not the right answer. I want you to be more specific than that. So we can start. Raise your right hand.

I, (state your name and where you are from) do solemnly swear that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof, so help me God. I, (state your name) do solemnly and sincerely swear, that I will faithfully and impartially discharge and perform all the duties incumbent on me as state Senator according to the best of my abilities, agreeably to the rules and regulations of this Constitution and the laws of the state of New Hampshire, so help me God.

You are all official. Congratulations.

District No. 1	John T. Gallus
District No. 2	Carl R. Johnson
District No. 3	Joseph D. Kenney
District No. 4	Robert K. Boyce
District No. 5	Peter H. Burling
District No. 6	Richard P. Green
District No. 7	Robert B. Flanders
District No. 8	Bob Odell
District No. 9	Sheila Roberge
District No. 10	Thomas R. Eaton
District No. 11	Peter E. Bragdon
District No. 12	David M. Gottesman
District No. 13	Joseph A. Foster
District No. 14	Robert E. Clegg, Jr.
District No. 15	Sylvia B. Larsen
District No. 16	Theodore L. Gatsas
District No. 17	John S. Barnes, Jr.
District No. 18	André A. Martel
District No. 19	Robert J. Letourneau

District No. 20
District No. 21
District No. 22
District No. 23
District No. 24

Lou D'Allesandro
Iris W. Estabrook
Charles W. Morse
Margaret Wood Hassan
Martha Fuller Clark

NOMINATIONS

Nominations for Temporary Presiding Officer.

Senator Roberge nominated the Honorable Jane E. O'Hearn for Temporary Presiding Officer.

Senator Foster seconded the nomination.

No further nominations.

Adopted.

The Honorable Jane E. O'Hearn is elected Temporary Presiding Officer.

The Honorable Steven J. Winter, Clerk of the Senate, requested that Senators Bragdon and Gottesman escort the Temporary Presiding Officer, the Honorable Jane E. O'Hearn, to the rostrum.

THE HONORABLE JANE E. O'HEARN: Good morning and congratulations to all of you. I would like to recognize Senator Larsen for a resolution.

RESOLUTION

Senator Larsen offered the following Resolution:

RESOLVED, that the Rules of the 2003-2004 session be adopted as the rules of the 2005-2006 session, with the changes which have been provided here today, and be it further RESOLVED that these rules may be amended by a majority vote for the next two legislative days.

Rule 14. Reconsideration.

No vote shall be reconsidered, unless the motion for reconsideration *is* made by a member who voted with the prevailing side. The notice of such motion for reconsideration shall be given to the Senate in open session prior to adjournment on the same day on which the vote *was* passed, or to the clerk within 2 working business days of the vote. Any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void. Reconsideration of any bills subject to a *deadline* established by Senate rules must be acted upon on or before the Senate rule deadline, and thereafter shall be null and void.

Rule 17. Introduction of bills

All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate printed and available for distribution.

Rule 25. Amended bills, printed distributed and disposed of.

When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the *senate* calendar on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be retained by the clerk and shall not be finally acted upon until the following legislative day, and a list of such bills with the report *of the committee* thereon shall be published in the *senate calendar* for the day on which action shall be taken.

Rule 29. Standing committees

The standing committees of the Senate shall be as follows: The Committee on Banks and Insurance, the Committee on Capital Budget, the Committee on Energy and Economic Development, Committee on Education, the Committee on Environment and Wildlife, the Committee on Executive Departments and Administration, the Committee on Finance, the Committee on Health & Human Services, the Committee on Internal Affairs, the Committee on Judiciary, the Committee on Public and Municipal Affairs, the Committee on Rules & Enrolled Bills, the Committee on Transportation and Interstate Cooperation, and the Committee on Ways and Means.

Rule 18. Bills, drafting of.

Rule 19. Committees of Conference

Rule 24. Public hearings to be held and advertised.

Rule 48. Deadlines

a) The filing period for legislation to be acted on in the first year session, beginning January 2005, will commence on Wednesday, November 10, 2004.

b) The Office of Legislative Services shall not draft a Senate bill or resolution, unless a request by a member for drafting with complete information has been received not later than 3:00 p.m. on Wednesday, December 15, 2004.

c) Every Senate bill and joint resolution in the first year session must be signed off in Legislative Services by 3:00 p.m. on Friday, January 14, 2005.

d) The last day to act on all Senate bills in the first year session is April 7, 2005.

e) The last day to act on all House Bills in the first year session is Thursday, June 9, 2005.

f) The last day to form a Committee of Conference in the first year session is Thursday, June 16, 2005. The deadline for Committee of Conference report sign-off is Wednesday, June 22, 2005, at 3:00 p.m. The deadline for action on Committee of Conference reports is Wednesday, June 29, 2005.

Adopted.

NOMINATIONS FOR PRESIDENT OF THE SENATE

The Honorable Jane E. O'Hearn, Honorary Presiding Officer, asked for nominations for the President of the Senate.

Senator Johnson nominated Senator Thomas R. Eaton for the President of the Senate.

SENATOR JOHNSON: Thank you, Chairman O'Hearn and members of the Senate. It is with pleasure and great honor that I rise to nominate Tom Eaton to the position of Senate President. Senator Eaton is widely respected within our chamber, throughout government, and across our state. During his tenure here in Concord, he has served this body with grace, diplomacy, good humor and fairness. He has rolled up his sleeves and tackled the toughest issues. He has been receptive to the needs of our constituents. He has not shied away from standing up for the things he believes in or for what is the best interest of the Senate. As New Hampshire faces the future, we welcome his proven leadership. The Senate stands united behind Tom Eaton, our next Senate President. Thank you, Madam Chair.

Senator D'Allesandro seconded the nomination.

SENATOR D'ALLESANDRO: Thank you, Madam President. I rise to second the nomination of Thomas Eaton as President of the New Hampshire State Senate. As Reverend Jones pointed out in his prayer, the Senate, as well as the legislative body, requires harmony to get things done. It requires all of us working in the same direction and performing the duties that are incumbent upon us and doing what is in the best interest of the people of the state of New Hampshire. I have found Tom Eaton to be that kind of individual. A friend, a colleague and a person who has the best interest of the state of New Hampshire at heart. It is my pleasure and honor to second his nomination and thank him for this opportunity. Thank you, Madam President.

No further nominations.

Adopted.

Senator Thomas R. Eaton is elected President of the Senate.

The Honorable Jane E. O'Hearn, Temporary Presiding Officer, requested that Senators Roberge and Fuller Clark escort the President of the Senate, Senator Thomas R. Eaton, to the rostrum.

PRESIDENT OF THE SENATE, THE HONORABLE THOMAS R. EATON: Senator O'Hearn, I want to thank you so very, very much for honoring us to be Presiding Officer today. Your shoes are going to be very hard to fill. We are going to miss you tremendously. You have worked tirelessly for your community, for the state of New Hampshire and for all of its citizens. We owe you a great big debt of gratitude. I wish you well, and Bob, in some of your travels that you do. I know that we will be seeing you on other committees and I have that written away, Jane O'Hearn, Jane O'Hearn for Study Committees. We will see you back here I know many, many times. Thank you very, very much.

Good morning. I would like to welcome some of you back and some of you here for the first time, to these historic chambers for the Organizing Session of the 2005 Senate. Thank you for honoring me with a second term as your Senate President. I am truly humbled by the trust and confidence you have placed in me. I look forward to working with all 23 of you in addressing the many challenges our state faces. Looking around the chamber, we start to realize what have we really gotten ourselves into. The history and tradition that lives on in this room can only partially be relived by the Senate Journals. We have a chance to make history happen and we should not look upon that opportunity lightly. As many of you know, this chamber is the oldest chamber still in use in the nation, having been in continuous use since 1819, the date the state house first opened. The murals that line the walls were painted by Barry

Faulkner, a resident of Keene, and were dedicated to the 1943 Senate as they convened. You know, when the Senate was first founded in 1784, there were only 12 members elected for one year terms. Over the years, we doubled in size to 24 members, yet after more than 200 years, the New Hampshire Senate still remains a citizen legislature, a true example of public service. Coming off a long and somewhat contentious election season, and the recounts just ending this week, I am looking forward to the job we have ahead of us and the opportunity to work together to advance a common sense agenda for New Hampshire. Also, as many of you know, I first ran for the Senate because of a family tradition of public service. When I was first elected President of the Senate in December 2002, I pledged to be fair. While we did have a few partisan battles along the way, there were many more issues that we were able to come to agreement on. At the end of the day, it is important for all of us to remember, we need to shake hands, walk away as allies and dispel any ill political will that would tarnish this entire institution and the principles upon which these chambers have operated for so long. We will face many challenges in the coming session and a lot has been written about what to expect. I do not envision that everything will go smoothly. Actually, I am pretty sure it won't. But I do promise to again be fair, respectful of each of you, and to keep an open mind. I believe one of the reasons you supported me here today is the vision of continued sound leadership and fiscally responsible policy decisions, and I will deliver that for you. We always keep in mind that we are here to do the people's business, not our own. I am confident that as a body, despite the philosophical differences that might exist among us, we will find common ground in the interest of serving our constituents. Please be assured that, as your leader, I am committed to fostering a climate of effective communication and bipartisanship. The two years ahead will require no less. The many issues we'll grapple with in the coming months, including the budget, education funding and Medicaid reform, will demand that politics be subordinated to a genuine effort to craft sound and compassionate public policy. Public policy that strikes the appropriate balance between providing essential government services to our most vulnerable citizens and the very real limitations of New Hampshire's families and businesses to fund those services. This is the essence of our challenge. As President Bush said following the elections last month, "A new term is a new opportunity. We have one country, one Constitution and one future that binds us." Let us take that same approach to our work here in New Hampshire. Indeed, we, too, have one state, one Constitution and one future that binds us. With those guiding principles and with a renewed sense of optimism, we will work closely with our new Governor and our new House Speaker in support of a unified pro-New Hampshire agenda. I am pleased to welcome back our veteran senators and to welcome aboard our six new senators: Senator Burling from District 5; Senator Bragdon, District 11; Senator Gottesman, District 12; Senator Letourneau, District 19; Senator Hassan, District 23; and Senator Fuller Clark, District 24. I am honored to serve alongside these new colleagues and those who are returning. I look forward to working with each of you for the betterment of our state and our constituents. Thank you so much again for this honor.

NOMINATIONS FOR CLERK OF THE SENATE

Senator Odell placed the name of Steven J. Winter in nomination for Clerk of the Senate.

SENATOR ODELL: Thank you, Mr. President. I am honored to rise to support and place the nomination of Steven J. Winter as Clerk of the Senate. Steve Winter has served this body ably over the last two years. His skill, his knowledge, and his awareness and his sensitivity, and his sense of fairness have all played an important part in the manner in which this body has conducted its business over the past two years. In addition, I am proud that Steve Winter is also a new constituent of mine. So, I am delighted to place his name in nomination. Thank you.

Senator Larsen seconded the nomination.

SENATOR LARSEN: I rise to second the motion and of nomination of Steve Winter. Steve has proven himself to be a parliamentarian and a fair one at that. I am happy to make and second the motion.

No further nominations.

Adopted.

The Honorable Steven J. Winter is elected Clerk of the New Hampshire Senate.

NOMINATIONS FOR ASSISTANT CLERK OF THE SENATE

Senator Larsen moved to place the name of Tammy L. Wright in nomination for Assistant Clerk of the Senate.

SENATOR LARSEN: I am happy to place in nomination the name of Tammy Wright of Concord. Tammy has served as Assistant Clerk of the Senate for 18 years and that is a remarkable achievement and one which has kept this body running well over those years.

Senator Gatsas seconded the nomination.

SENATOR GATSAS: Thank you, Mr. President. I would like to second the nomination for Tammy Wright. She certainly brings the institution knowledge here that most Senators walk in and ask her questions and she certainly helps them through it. Thank you.

No further nominations.

Adopted.

Tammy L. Wright is elected Assistant Clerk of the Senate.

NOMINATIONS FOR SENATE SERGEANT-AT-ARMS

Senator Larsen moved that the name of Henry W. Wilson be placed in nomination for Sergeant-At-Arms.

SENATOR LARSEN: I am privileged to put in nomination the name of Hank Wilson for Sergeant-At-Arms. Hank has been a remarkable friend to the Senate, one who has brought an array of pages through the years to the Senate, and one who keeps our group running well and keeps us in good form. So I put in the nomination of Henry Wilson/Hank Wilson, for Sergeant-At-Arms.

Senator Flanders seconded the nomination.

SENATOR FLANDERS: Mr. President, it is an honor to second the nomination for Hank Wilson for Sergeant-At-Arms.

No further nominations.

Adopted.

Henry W. Wilson is elected Sergeant-At-Arms.

NOMINATIONS FOR SENATE DOORKEEPER

Senator Clegg moved that the name of John J. Byrnes, Sr. be placed in nomination for Doorkeeper.

SENATOR CLEGG: Thank you, Mr. President. It is my honor to place in nomination the name of John Byrnes as Doorkeeper for the Senate. John has done a great job the last two years. It has been a pleasure to know him. It will be a pleasure to have him for two more years. Thank you.

Senator Larsen seconded the nomination.

SENATOR LARSEN: I move to second the nomination. John has brought enthusiasm and a great deal of interest in our operations. It has been nice to have gotten to know him over these two years, and a pleasure to re-nominate, second his nomination.

No further nominations.

Adopted.

John J. Byrnes, Sr. is elected Doorkeeper.

The President administered the oaths of office to the Senate Clerk, Assistant Clerk of the Senate, the Sergeant-At-Arms, and the Doorkeeper.

PRESIDENT EATON (In the Chair): I (state your name), do solemnly swear that I will bear faith and true allegiance to the United States of America and to the state of New Hampshire and will support the Constitution thereof, so help me God. I (state your name) do solemnly and sincerely swear and affirm, that I will faithfully and impartially discharge and perform all the duties incumbent upon me as (state your role) according to the best of my abilities, agreeably to the rules and regulations of this Constitution and the laws of the state of New Hampshire, so help me God.

SENATOR EATON(In the Chair): Congratulations all of you. I look forward to working with you for another two years.

RESOLUTION

Senator Barnes offered the following Resolution:

RESOLVED, that the Secretary of State be requested to furnish the Senate with the official return of votes from the various Senatorial Districts.

Adopted.

The Honorable William M. Gardner, Secretary of State, appeared and presented the return of votes for the state Senators from the various Senatorial Districts, as returned to the Secretary of State's Office from the General Election held on November 2, 2004.

THE HONORABLE WILLIAM GARDNER: Thank you. Mr. President, honorable members, Part II of our Constitution requires that moderators and other election officials sort and count the ballots, announce publicly the result of the vote for each office on the ballot. Then the town clerk has to forward an attested copy to the Secretary of State to be tallied, compiled and reported back to the House and to the Senate. At the election on November 2nd, the following is the results cast for each Senate district, thus the following:

First District

John T. Gallus, r	15,822
Jerry Sorluccho, d	<u>10,748</u>
Plurality for Gallus	5,074

Second District

Carl R. Johnson, r	15,407
Sid Lovett, d	<u>13,229</u>
Plurality for Johnson	2,178

Third District

Joseph D. Kenney, r	17,044
William W. Farnum, d	<u>11,567</u>
Plurality for Kenney	5,477

Fourth District

Robert K. Boyce, r	14,106
Beth Arseneault, d	<u>12,687</u>
Plurality for Boyce	1,419

Fifth District

Peter Hoe Burling, d	15,388
James Dean, r	<u>11,143</u>
Plurality for Burling	4,245

Sixth District

Richard Green, r	14,954
Marlene M. DeChane, d	<u>10,134</u>
Plurality for Green	4,820

Seventh District

Robert B. Flanders, r	14,131
Beth Rodd, d	<u>13,009</u>
Plurality for Flanders	1,122

Eighth District

Bob Odell, r	16,395
Carroll D. French, d	<u>10,086</u>
Plurality for Odell	6,309

Ninth District

Sheila Roberge, r	18,776
Rose H. Arthur, d	<u>10,629</u>
Plurality for Roberge	8,147

Tenth District

Tom Eaton, r	13,717
McKim W. Mitchell, d	<u>12,775</u>
Plurality for Eaton	942

Eleventh District

Peter Bragdon, r	14,970
Mark Fernald, d	<u>14,523</u>
Plurality for Bragdon	447

Twelfth District

David Gottesman, d	13,335
Harry Haytayan, r	<u>13,164</u>
Plurality for Gottesman	171

Thirteenth District

Joseph A. Foster, d&r	
Plurality for Foster	15,843

Fourteenth District

Robert Clegg, r	15,279
John Knowles, d	<u>9,573</u>
Plurality for Clegg	5,706

Fifteenth District

Sylvia B. Larsen, d	18,142
Jeff Newman, r	<u>8,848</u>
Plurality for Larsen	9,294

Sixteenth District

Theodore Gatsas, r	16,885
Tom St. Martin, d	<u>10,479</u>
Plurality for Gatsas	6,406

Seventeenth District

John S. Barnes, Jr., r	16,437
Corey E. Corbin, d	<u>10,416</u>
Plurality for Barnes, Jr.	6,021

Eighteenth District

Andre A. Martel, r	11,095
Dave Gelinas, d	<u>10,929</u>
Plurality for Martel	166

Nineteenth District

Bob Letourneau, r	14,907
Grace L. Reisdorf, d	<u>9,887</u>
Plurality for Letourneau	5,020

Twentieth District

Lou D'Allesandro, d	11,243
Joseph Kelly Levasseur, r	<u>9,533</u>
Plurality for D'Allesandro	1,710

Twenty-First District

Iris W. Estabrook, d	14,657
Daniel J. Philbrick, r	<u>12,352</u>
Plurality for Estabrook	2,305

Twenty-Second District

Chuck Morse, r	16,590
Michael K. Garofalo, d	<u>10,192</u>
Plurality for Morse	6,398

Twenty-Third District

Maggie Wood Hassan, d	15,201
Russell Prescott, r	<u>14,054</u>
Plurality for Hassan	1,147

Twenty-Fourth District

Martha Fuller Clark, d	16,791
John E. Lyons, Jr., r	<u>15,494</u>
Plurality for Clark	1,297

THE HONORABLE WILLIAM GARDNER: Those are the official figures that are being returned today, to you in the Senate, Mr. President.

SENATOR EATON (In the Chair): Thank you, Secretary Gardner.

RESOLUTION

Senator Clegg offered the following Resolution:

RESOLVED, that the returns from the several senatorial districts be referred to a select committee of three with instructions to examine and count the same and report to the Senate where any vacancies or contest exists and, if so, in what senatorial district.

Adopted.

The Chair appointed Senators: Flanders, Estabrook and Kenney to examine the vote totals.

Recess.

Out of recess.

COMMITTEE REPORT

Senator Flanders reported that the select committee to which was referred the various return of votes for state Senators from the several districts, having attended to their duties and having examined the returns made to the Secretary of State, reports that it finds the state of the vote returned from the several districts to be correct.

Senator Martel moved to adopt the report.

Adopted.

RESOLUTION

Senator Gallus offered the following Resolution:

RESOLVED, that the biennium salary of the members of the Senate be paid in one undivided sum as early as practical after adoption of this resolution, and be it further RESOLVED, that the mileage of members of the Senate be paid every two weeks during the session.

Adopted.

SENATOR EATON (In the Chair): This is the time where we, just so the other members here know, and guests, this is the time that we normally would break for Joint Resolution and go in with the House to elect the Treasurer and Secretary of State. But, they're going to be delayed a little bit next door in voting for the Speaker of the House. I believe that they just barely got the oath of office just now. So what I would like to do is, we would have normally done this a little later in the program, is to have introduction of guests and visitors, and any announcements.

INTRODUCTION OF GUESTS

SENATOR D'ALLESANDRO (RULE #44): Thank you, Mr. President. While we have a moment. Senator Odell, in his comments, talked about the late Senator George Disnard. I thought that we should make note in the record of the passing of one of the truly great, great Americans. One of the greatest generation. Those of us who served with George Disnard, just know what a quality human being he was. I know Ted Gatsas became very friendly with George and helped George along the way. They shared a common concern for horses, particularly the ones that cross the finish line first. I had the privilege of being a friend of George Disnard's. If we could say any one thing about George Disnard, he was truly a great American, a man of just tremendous courage. He served in World War II. Was many times decorated because of his service in World War II. A wonderful educator, superintendent of the schools in Claremont, teacher and superintendent of schools. Had tremendous devotion to his wife. Those of us who know of his wife's problems, know that George spoke of his wife and said that he would do anything and everything to care for his wife while she was infirmed, and he did that. As a legislator, you knew where George stood on every item. He was a man who was a man of his word. The state is the beneficiary of his service. By the same token, the state suffers because of his loss. People like George Disnard come along you know, once in a lifetime. Wojtek, who

put on a wonderful, wonderful, affair for him that we all attended, I think, knows of really the kind of human being that George Disnard was. It sets an example for all of us in the Senate, to be the same kind of individual that George was, to dedicate ourselves to public service and to dedicate ourselves to doing the right thing. He did that. He did that unselfishly and with an eye to its making life better for everybody. We are all lucky to have been associated with George Disnard. We owe something for the quality of his life and for the quality of our life because of his association with us. I echo Senator Odell's comments that he was truly, you know, a great American. A great American.

SENATOR EATON (In the Chair): Thank you, Senator D'Allesandro, we do all miss him.

SENATOR BARNES (RULE #44): Thank you, Mr. President. Seeing I am from the other party, I would like to speak about George Disnard for just a couple of minutes. Senator D'Allesandro said many true things during his conversation with us. Something that really jumped out, and I think that we should all pay attention to. He was a man of his word. You know something? That is all we have up here. I am talking to all 23 others of us. We only have our words to go by. George certainly put me under his wing on my first term up here. I was in a 13 to 11 Senate that was run by the Democratic party, although it said Republican, but it wasn't. George and my good friend Junie Blaisdell took me under their wing and they kept me straight and made me realize that this was a great body. George Disnard had an awful lot to do with me being able to stay here and represent the people and appreciate the chamber that we are sitting in. He let me know that this chamber is a heck of a lot more important than I am, because it has been here 220 years and I have only been here 73. Keep that in mind. George Disnard's lesson to me was this chamber is more important than any, any individual in it. For that George, I thank you.

SENATOR LARSEN (RULE #44): I just rise to second the statements made. As I drove past Disnard School this weekend, I realized that there is no better mark you can leave on life, than to have left the world a better place, and George Disnard certainly made that difference.

I would also like to recognize someone who, because of circumstances, was not able to give a parting statement to this Senate and, as a result, those of us who might have said something about his service to the state didn't have a chance. So, I would like to rise and honor Clifton Below's service to the state. Cliff, as all of us knew, was an amazing resource to the state. He would stay up nights doing spreadsheets, working his own numbers, verifying numbers, finding his own answers, giving us and sharing that knowledge with us. Truly a remarkable man who gave his all, and sometimes more than his all, to stay up 'til two in the morning and be here at seven, to make sure that we had the information that he thought was so valuable. He did his own work. He did beautiful work. We will miss him. We are happy to have his replacement, and certainly welcome that, but I wanted to make a statement that Cliff Below was a wonderful man of the people and a very huge gift to the state. I am sure we will see him around again. We say goodbye to Cliff and hope to see you around the State House in other ways and around the state, continuing to give back as he did. Thank you.

SENATOR EATON (In the Chair): Senator Burling, you have inherited two a.m. mornings.

SENATOR FLANDERS (RULE #44): Mr. President. Just briefly. It was an honor to sit next to Senator George. I have a funny story. I have not told this to many people, but when I first came, being a novice and not having the privilege of serving in the House. I got up and spoke against a bill that was a Republican bill. When I sat down, George whispered in my ear, he said, "Leadership is going to be very upset with you." About six months later, the Democratic leadership had a bill. He got up and spoke against it and then he sat down and then he said, "Now my leadership is very upset with me." I just say about Senator George, that he is the only man I have ever met in my life that would thank you for being nice to him. I just remember that. My office, when it was across the street, he used to come in, in the morning and I would say good morning. He would come in and say, "thank you for being nice to me." I have great memories and it was a great honor to sit next to him. Thank you.

SENATOR BURLING (RULE #44): Thank you, Mr. President. I just wanted to share a vision, if I may. The night that George died, I was at Lake Sunapee and my telephone rang. It was Wayne McCutcheon, who was one of George's dearest friends and closest associates in Claremont. And Wayne told me that George had just passed away and he asked me to come join him at George's house so arrangements might be made. As I drove down the street in the evening, that light, I was struck by the crowd of people who were assembling on the lawn of George's house. I just would ask you to consider the honor that was paid by his neighbors, his friends and his loved ones. By the time I parked my car and walked to the door, there were fifty, maybe sixty people who had come just to stand vigil for George Disnard. He was an amazing person. The stories he left for all of us are incredible and I am so privileged. George was, for me, a political mentor for twenty years. I will never, never forget the privilege of that relationship. Thank you, Mr. President.

SENATOR EATON (In the Chair): We are going to be in recess for a while. I would ask that friends and guests make your way around the State House a little bit. We don't know how long the House will be. I still believe it may go well after noon. We still have the room downstairs where we had coffee and donuts this morning. Help yourself there. The cafeteria is downstairs. When we do get ready to come into Joint Session, we will send someone to those areas to let everyone know. Also, we all signed our oath of office this morning. If you would kindly deliver that to the Clerk today, we would appreciate that.

CLERK OF THE SENATE: There are more papers in your folder to be completed also. We have a checklist so we will be checking you off.

SENATOR EATON (In the Chair): He has a very efficient manner. We will now take a recess and please stay close by.

Recess.

Out of recess.

HOUSE MESSAGE

The House of Representatives has organized and has elected its Speaker:

Speaker of the House: Representative W. Douglas Scamman, Jr.

HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of electing a State Treasurer and a Secretary of State.

RESOLUTION

Senator Morse offered the following Resolution:

RESOLVED, that the Senate meet in Joint Convention for the purpose of electing the Secretary of State and the State Treasurer.

Adopted.

In recess for Joint Convention.

Out of recess.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session and that the business of the late session be in order at the present time.

Adopted.

**LATE SESSION
ANNOUNCEMENTS****RESOLUTION**

Senator Clegg moved that the Senate, having organized, and completed its business for the day, now adjourn to 10:00 a.m., on Wednesday, January 5, 2005 for Convening Day.

Adopted.

Adjournment.

SENATE RULES

As adopted 12-01-04

1. Determination of quorum; correction of Journal.
2. Members, decorum of.
3. Members, conduct when speaking.
4. Members not to speak more than twice.
5. President shall recognize whom.
6. Questions of order, appeal.
7. Member, absenting himself.
8. Motions, order of preference.
9. Questions postponed indefinitely not acted upon in same biennium.
10. Questions, when divided.
11. Objections to reading paper, how determined.
12. Roll Call, everyone must vote.
13. Galleries, clearing of.
14. Reconsideration.
15. Petitions, introduction of.
16. Bills; shall be numbered and expressed clearly.
17. Bills, introduction of.
18. Bills, drafting of.
19. Committees of Conference.
20. Resolutions to be treated as bills.
21. Bills shall have three readings; Progress of; time for second and third readings.
22. Bills, printing and distribution.
23. Bills amended only on second reading; filing of amendments.
24. Public hearings to be held and advertised.
25. Amended bills, printed distributed and disposed of.
26. Appropriating money, to whom referred.

27. President to sign bills, etc.
28. Committees, appointment of.
29. Standing Committees.
30. Messages sent to House.
31. Messages, when received.
32. Voting; division of Senate.
33. Visitors to Senate.
34. Hours of meeting.
35. Rules of Senate, how suspended.
36. Rules of Senate, how rescinded.
37. Committee of the whole.
38. President may name member to chair.
39. Senate staff; composition and duties.
40. Senate staff, days of employment.
41. Committees, reports and meetings.
42. Conflict of Interest.
43. Committee of Conference reports.
44. Personal privilege.
45. Appeal, presiding officer ruling.
46. Motions, no substitution under color of amendment.
47. Requisition Approval Required.
48. Deadline

SENATE RULES

1. The President, having taken the chair, shall determine a quorum to be present. Any erroneous entry in the daily journal shall be corrected no later than the third succeeding legislative day, and the permanent journal corrected within one week after the permanent journal copy is placed in the hands of the Senate.
2. No member shall hold conversation with another while a member is speaking in debate, or use electronic devices, including but not limited to personal computers, and telephonic devices, without leave of the Senate.
3. Every member, wishing to speak, shall notify the President. When the member is recognized to speak he shall rise and address the President, and when he has finished shall then sit down.
4. No member shall speak more than twice on the same question on the same day without leave of the Senate President.
5. More than one member wishing to speak at the same time, the President shall decide who shall speak first.
6. The President shall preserve decorum and order. If any member transgresses the rules of the Senate, the President shall, or any member may, call him to order in which case the member so called to order shall immediately cease and desist, and the Senate, if appealed to, shall decide the case. But if there is no appeal, the decision of the President shall be conclusive.
7. No member shall absent himself without permission from the Senate.
8. When any question is under debate, no motion shall be received but first, to adjourn; second, to lay upon the table; third, for the previous question; fourth, to postpone to a certain day; fifth, to commit; sixth, to amend; and seventh, to postpone indefinitely; which

several motions shall have precedence in the order in which they are so arranged. Motions to adjourn, to lay upon the table, for the previous question, and to take from the table shall be decided without debate. Motions to postpone to a certain day shall be debatable both as to time and subject matter. No motion to postpone indefinitely, to postpone to a certain day, or to commit, being decided, shall be in order at the same stage of the bill or resolution, until after adjournment.

9. A question which is postponed indefinitely shall not be acted upon during the biennium except whenever two-thirds of the whole number of elected Senators shall on division taken, vote in favor thereof. Any bill which is indefinitely postponed shall not be re-introduced under cover of an amendment any bill, resolution, order, or committee of conference report. No motion to suspend this rule shall be permitted.
10. Any member may call for a division of the question when the sense will admit it. Unless otherwise specifically provided for, a majority of those present and voting shall be required to pass any vote.
11. When the reading of a paper or document is objected to by a member, the question shall be determined by a vote of the Senate; and without debate.
12. When the nays and yeas have been moved by a member and duly seconded by another member each member present shall declare his assent or dissent to the question, unless for special reason he be excused by the Senate. The names of the persons so making the motion and the second shall be recorded in the Journal. The President shall determine the order of the roll call. No member shall be required to vote in any case where he was not present when the question was put.
13. In case of any disturbance or disorderly conduct in the gallery, the President shall have the power to order the same to be cleared. The Chairman of the Committee of the Whole may restrict attendance to the duly elected Senators.
14. No vote shall be reconsidered, unless the motion for reconsideration is made by a member who voted with the prevailing side. The notice of such motion for reconsideration shall be given to the Senate in open session prior to adjournment on the same day on which the vote was passed, or to the clerk within 2 working business days of the vote. Any such notice of reconsideration shall be effective for three legislative days only and thereafter shall be null and void. Reconsideration of any bills subject to a deadline established by Senate rules must be acted upon on or before the Senate rule deadline, and thereafter shall be null and void.
15. Before any petition shall be received and read, a brief statement of the contents thereof shall be made by the member introducing the same.
16. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced in the Senate, shall be endorsed with the name of the Senator presenting them, and with the subject matter of the same. Every bill shall be marked on the first page "Senate Bill" and numbered serially; every joint resolution shall be marked "Senate Joint Resolution" and numbered

serially; every concurrent resolution proposing a constitutional amendment shall be marked "Concurrent Resolution Proposing a Constitutional Amendment" and numbered serially; and every other concurrent resolution shall be marked "Senate Concurrent Resolution" and numbered serially, as each bill or resolution is introduced into the Senate.

17. All petitions, memorials and other papers addressed to the Senate and all bills and resolutions to be introduced into the Senate shall be delivered or caused to be delivered to the Office of Legislative Services, which in turn will submit it to the sponsor for his signature, and then to the Clerk by Legislative Services. If requested by the sponsor, a proposed bill, resolution or petition shall not be made public, except by the sponsor, until signed by the sponsor. During any adjournment the President may receive bills and resolutions for printing and for reference to committee, provided that no bill shall have a public hearing until it is formally introduced into the Senate, printed and available for distribution.
18. Drafting of Bills
 - (a) If a drafting request for a bill or resolution has been filed with the office of Legislative Services requiring a fiscal note as provided in RSA 14:44-47, the substance or a draft of the proposal may be provided to the legislative budget assistant for preparation of the required fiscal note without the specific consent of the sponsor of the proposal, provided that the identity of the sponsor shall not be disclosed.
 - (b) Notwithstanding the provisions of 17 (a), (b), and (c), a Senate bill, Senate joint resolutions, or Senate concurrent resolution may be accepted by Legislative Services for drafting and introduced into the Senate at any time prior to the deadline established by Senate Rules for the transfer of bills out of the first body if approved by either a majority of the Senate Rules Committee or a two-thirds vote on the floor.
 - (c) No bill the subject matter of which has been indefinitely postponed or made inexpedient to legislate in the Senate in the first-year session shall be admitted into the second-year session whether as a bill, an amendment, a committee of conference report or in any other manner.
 - (d) Legislation returned from the non-originating body, with an amendment, shall not be re-referred to Committee but shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference. Adoption of a motion to Nonconcur kills the legislation.
19. Committees of Conference.
 - (a) Whenever there be any disagreement between the Senate and the House on the content of any bill or resolution, and whenever both bodies, voting separately, have agreed to establish a committee of conference, the President of the Senate shall appoint three members to the Senate conference committee on the bill and the Speaker of the House shall appoint four members to the House conference committee. Exceptions: (1) the House committee of conference on the operating budget shall consist of five members; (2) the number of the members of the committees of conference on any bill may increase or decrease if the President and the Speaker both agree. The two committees of conference on a bill shall meet jointly but

vote separately while in conference. A unanimous vote by both committees of conference shall be necessary for an agreed report to the Senate and the House by the committees of conference.

(b) The first-named person from the body where the bill or resolution in disagreement originated shall have the authority to call the time and place for the first meeting of the committees of conference on said bill.

(c) The first-named person on a committee of conference shall be the chairman of that conference. The chairman of the committee of conference of the body where the bill or resolution in disagreement originated shall chair the joint meeting of the committees of conference.

(d) No action shall be taken in either body on any committee of conference report earlier than some subsequent day, after the report has been delivered to the seats or placed on a member's desk. A committee of conference may neither change the title of any bill submitted to it nor add amendments which are not germane to the subject matter of the bill as originally submitted to it.

(e) Conference Committees on Budget Bills. The report of each committee of conference on either the general appropriation bill, or the capital improvements bill shall be printed in the journal or a supplement thereto of the appropriate body before action on said report is taken on the floor. Non-germane amendments, sections and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances. Notwithstanding the general provisions of paragraph (h) of this section, the Conference Committee on general appropriations bill may propose new items for inclusion in said bill but no such item may be so included unless and until it shall have been returned to both the Senate and the House and adopted in identical form by a majority vote in each body.

(f) When both committees of conference on a concurrent resolution proposing an amendment to the constitution have agreed, the committee of conference from the body which acceded to a request for committees of conference shall file its report with the clerk of that body who shall print it in full in the journal or supplement of that body. The report shall be made a special order of business at the late session of a subsequent day. After said report has been adopted by the first body, a message shall be transmitted to the second body which shall then act upon the report of its committee of conference.

(g) The sponsor of any bill or joint resolution referred to committees of conference shall, upon his request, be granted a hearing before said committees prior to action thereon.

(h) No member of a committee of conference shall sign any report that contains non-germane amendments or subject matter that has been indefinitely postponed in either body. For the purposes of this rule, a non-germane amendment would be any subject matter not contained in either the House or the Senate version of the bill.

20. All resolutions which may require the signature of the Governor shall be treated in the same manner as bills.

21. Every bill shall have three readings in the Senate previous to its passage. The first and second readings shall be by title only which

may be accomplished by a conglomerate resolution, after which the bill shall be referred by the President to the appropriate committee and shall be printed as provided in Rule 22, unless otherwise ordered by the Senate. No bill after it has been read a second time shall have a third reading until after adjournment from the early session. The time assigned for the third reading of bills and resolutions shall be in the late session unless otherwise ordered by the Senate. The orders of the day for the reading of bills shall hold for every succeeding day until disposed of.

22. After every bill shall have been read a second time, and referred by the President to the appropriate committee, the Clerk shall procure a sufficient number of copies, printed on paper of uniform size, for the use of the legislature, and cause the same to be distributed to the members, and when printed the bill shall be immediately delivered to the committee to which it shall have been referred. Bills received from the House shall be printed at the same stage of their procedure unless they have been printed in the House and copies distributed in the Senate, in which case any amendment made by the House shall be duplicated and distributed in the Senate.
23. No amendment shall be made but upon the second reading of a bill; and all amendments to bills and resolutions shall be in writing, with the name of the Senator and the district he represents, or in the case of a committee amendment the name of the committee that recommended it, thereon. No amendment to any bill shall be proposed or allowed at any time or by any source, including a committee of conference, except it be germane. Amendments shall have been reviewed by the Office of Legislative Services for form, construction, statutory and chapter reference.
24. A hearing shall be held upon each bill referred to a committee, and notice of such hearing shall be advertised at least 4 days before hearing in the Senate Calendar. The Senate Calendar shall be available on the Internet for viewing as soon as it has been released for printing.
 - (a) All bills in the possession of committees shall be reported out with one of the following recommendations: ought to pass, ought to pass with amendment, re-refer to committee, inexpedient to legislate, or refer for interim study. Re-refer to committee shall be a committee report only in the first-year session. All re-referred bills shall be acted on by the third legislative day of the second year session. Refer for interim study shall be a committee report only in the second year session.
 - (b) Any legislation creating a chapter study committee shall have membership limited to members of the General Court.
25. When a bill is reported favorably with an amendment, the report of the committee shall state the amendment, and then recite the section of the bill in full as amended. The amendment shall be printed in the senate calendar on the date that the report is listed for action. If no action is taken on that day, then the amendment shall be printed on the day to which the bill has been referred. All bills reported shall be retained by the clerk and shall not be finally acted upon until the following legislative day, and a list of such bills with the report of the committee thereon shall be published in the senate calendar for the day on which action shall be taken.

26. Every bill and joint resolution appropriating money, which has been referred to another committee and favorably accepted by the Senate, shall be committed to the Finance Committee for review. If any such bills have been referred jointly to the Finance Committee and another standing committee, the Finance Committee may report separately and a further public hearing may be held at the discretion of the Finance Committee. All bills appropriating money, which are referred directly to the Finance Committee shall have a hearing.
27. All warrants, subpoenas and other processes issued by order of the Senate shall be under the hand and seal of the President attested by the Clerk.
28. All committees of the Senate, including Senate members on committees of conference, shall consist of members of both parties as nearly equal as possible, provided that on all committees, both parties shall be represented. The President shall appoint the members of all committees, after consulting with the minority leader.
29. The standing committees of the Senate shall be as follows: The Committee on Banks and Insurance, the Committee on Capital Budget, the Committee on Energy and Economic Development, the Committee on Education, the Committee on Environment and Wildlife, the Committee on Executive Departments and Administration, the Committee on Finance, the Committee on Health & Human Services, the Committee on Internal Affairs, the Committee on Judiciary, the Committee on Public and Municipal Affairs, the Committee on Rules & Enrolled Bills, the Committee on Transportation and Interstate Cooperation, and the Committee on Ways and Means.
30. Messages shall be sent to the House of Representatives by the Clerk of the Senate.
31. Messages from the Governor or House of Representatives may be received at all times, except when the Senate is engaged in putting the question, in calling the yeas and nays, or in counting the ballots.
32. All questions shall be put by the President, and each member of the Senate present shall signify his assent or dissent by voting yea or nay, or shall abstain from voting by reason of a conflict pursuant to rule 42. If the President doubts, or a division is called for, the Senate shall divide. Those in the affirmative on the question shall first rise from their seats and stand until they be counted. The President shall rise and state the decision of the Senate.
33. No person except members of the Senate and its officers, the Governor, Council members, the Secretary of State, the Treasurer, the Speaker of the House of Representatives and its officers and clerks, shall be admitted to the floor of the Senate while the Senate is in session, except by the invitation of the President, or some member with the President's consent.
34. The Senate shall adjourn to meet on the subsequent legislative day for the early session at the time mentioned in the adjournment motion. The late session shall immediately follow the early session unless the Senate shall otherwise order.
35. No standing rule of the Senate shall be suspended unless two-thirds of the members present and voting vote in favor thereof. This rule shall not apply to Senate Rule 9.

36. No rule shall be rescinded unless two days notice of the motion has been given and two-thirds of those present and voting vote therefore.
37. The Senate may resolve itself into a Committee of the Whole at any time on motion made for that purpose; and in forming a Committee of the Whole, the President shall leave the chair, and appoint a chairperson to preside in committee.
38. The President when performing the duties of the Chair may, at any time, name any member to perform the duties of the Chair.
39. The staff of the Senate shall be comprised of a clerk, an assistant clerk, a sergeant-at-arms, and a doorkeeper who are to be elected by the Senate, and such other personnel as the President shall appoint. The President shall define the duties of all members of the Senate staff which are not fixed by statute or otherwise ordered by the Senate.
40. Each member of the staff of the Senate shall be available on call to carry out the work of the Senate.
41. The committees shall promptly consider and report on all matters referred to them. The President may authorize such committees having a heavy load of investigation, re-drafting, research or amendments to meet as needed on non-legislative days during the legislative session. The Clerk of the Senate shall prepare a list by number, title and sponsor of all Senate bills and resolutions in committee which have not been acted upon within one week before the deadline established for the transfer of bills and resolutions from the Senate to the House of Representatives, and he/she shall distribute this list to every member of the Senate as soon as it is prepared.
42. In all instances every member shall act in conformance with the duly adopted Ethical Guidelines and Opinions of the New Hampshire General Court.
43. Action on the floor of a report of the Committee on Finance or a Committee of Conference on either the general appropriations (budget) bill or the capital budget bill, shall not be taken by the Senate, until said report has been available from the Senate Clerk twenty-four hours in advance, in written form. Non-germane amendments and footnotes to such bills (except footnotes in explanation of the principal text of such bills or designating the use or restriction of any funds or portions thereof) are prohibited and shall not be allowed under any circumstances.
44. Personal Privilege: A Senator may, as a matter of personal privilege, defend his/her position on a bill, his/her integrity, his/her record, or his/her conduct, against unfair or unwarranted criticism, or may speak of an issue which relates to his/her rights, privileges or conveniences as a Senator; provided, however, the matters raised under personal privilege shall not be subject to questioning, answer, or debate, by another Senator. Personal Privilege remarks may be included in the Daily Journal if requested by the Senator, and in the Permanent Journal by vote of the Senate. A Senator may speak on other matters of his/her choosing and in such cases may be subject to questioning and/or answer according to the Rules of the Senate.
45. Any appeal from the ruling of the presiding officer shall be decided by majority vote of the members present and voting.

46. No new motion shall be admitted under color of amendment as a substitute for the motion under debate.
47. No officer or employee of the Senate during the session or any adjournment thereof shall purchase or contract for the purchase, pay or promise to pay any sum of money on behalf of the Senate or issue any requisition or manifest without the approval of the Senate President.
48. Deadlines:
 - a) The filing period for legislation to be acted on in the first year session, beginning January 2005, will commence on Wednesday, November 10, 2004.
 - b) The Office of Legislative Services shall not draft a Senate bill or resolution, unless a request by a member for drafting with complete information has been received not later than 3:00 p.m. on Wednesday, December 15, 2004.
 - c) Every Senate bill and joint resolution in the first year session must be signed off in Legislative Services by 3:00 p.m. on Friday, January 14, 2005.
 - d) The last day to act on all Senate bills in the first year session is April 7, 2005.
 - e) The last day to act on all House Bills in the first year session is Thursday, June 9, 2005.
 - f) The last day to form a Committee of Conference in the first year session is Thursday, June 16, 2005. The deadline for Committee of Conference report sign-off is Wednesday, June 22, 2005, at 3:00 p.m. The deadline for action on Committee of Conference reports is Wednesday, June 29, 2005.

January 5, 2005

CONVENING DAY

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! How are you? First of all, let me say, for those of you that I haven't met, my name is David, and I hope that is what you'll call me. I only am right across the street and everybody is going to get my calling card in their box out there, don't hesitate.

SENATOR BARNES: You're going to need it before the session is over.

DAVID JONES: I'm not done. Please be quiet, Senator. I get to do that. I want you also to know I hate hidden agendas, and I have an agenda, and I want you to know what it is. It is always the same and it will never change. My agenda is you. That is it. So, please let me be however is helpful to you, here for you. I have some thoughts. You have a choice today. As a matter of fact, it is the same choice you will have every single day of the next two-year legislative session and you will have to remake this choice every single day, because one time will not cut it. Here's the choice. Given the wide range of opinions and priorities and parties and preferences and personalities in this particular senatorial mix, as you go about performing the big bad task of leadership, how are you going to treat each other in the process? That is your choice. And believe me, your choice

is going to make all the difference. You can choose the Ginger Rogers and Fred Astaire model or you can choose the Laurel and Hardy model. Rogers and Astaire made ten movies together. Despite being two very different people in every way, they danced their way through those performances in ways that made you gasp and thrilled your spirit. They each knew their roles. They each knew when to follow and when to lead. They each knew when to stop and neither one ever forgot that they couldn't do anything without the other one. Laurel and Hardy became famous by their ability to make people laugh at them. Even when they accomplished their task together, such as hauling an unwheeled piano up a long flight of endless steps, they did it by fighting and tussling with each other and always ended up seeming to be in "another fine mess that you haven't gotten me into." So, every day, for the next two years, senators and staff members and lobbyists, and I wish the press was here 'cause it includes them too. You get to choose how to treat your colleagues in this place. Remember, no matter what great task you accomplish here, your choice will determine whether, at the end of the day, you have crafted something of beauty or another fine mess. Let us pray together.

Play Your music in this place, O God, and give these dedicated and caring actors the capacity to choose ways of performing their roles with a combination of beauty and humor; that all of their pianos may end up at the top of the stairs as they dance gracefully together. Amen

Senator Gallus led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR EATON (RULE #44): Last month, on the day you honored me with a second term as your President, I welcomed both returning and new senators, and spoke of the challenges we'll be facing in the coming months. There are varying projections as to the outlook for the next biennium's budget. However, like all of you, I am optimistic about the future, and I am committed to working with all to address the challenges that lie ahead. Again, I underscore the importance of striking a balance between meeting the needs of those we represent, while respecting the limitations of those we're asking to fund those services to meet those needs. New Hampshire has led the New England region in its economic recovery, and our leadership role continues to generate revenues in excess of our projections. Indeed, this past week, the State Treasurer reported that the state's debt rating remains strong at a level of AA. This solid credit rating reflects our state's resilient economy and the fact that we are a leader amongst New England states. An economy that continues to grow will have a positive effect on our state's budget going forward. Understandably, that's our goal. Tomorrow is inauguration day and we will learn the specifics of Governor-elect John Lynch's ideas on the budget, education funding, and other critical issues. With a new speaker, a new governor, and a new makeup in this Senate, I am confident that progress will be made in a number of these important areas. Whether we're debating reforms to health insurance, Medicaid modernization, or our ethics laws and guidelines, I believe we can work together in a manner characterized by good communication and a spirit of bipartisanship. Those are the ideals to which I'm committed, and to which, as a group, we shall all aspire under my leadership. I am pleased to welcome members and guests of the 2005-2006 New Hampshire Senate. My leadership team and I pledge to work cooperatively, and to act as good stewards in carrying out the people's business here and in Concord. I want to thank you all and let's get to work!

HOUSE MESSAGE

The House of Representatives has organized and elected its officers:

Clerk of the House: Karen O. Wadsworth

Sergeant-At-Arms: Deborah A. Nielsen

HOUSE MESSAGE

The House of Representatives is ready to meet in Joint Convention for the purpose of canvassing the votes for Governor and Executive Council.

In recess for Joint Convention.

Out of recess.

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from Senate Bill 12 to Senate Joint Resolution 1, shall be by this resolution read a first and a second time by the therein listed titles and referred to the designated committees.

Adopted.

First and Second Reading and Referral

05-0409

SB 12, relative to a certain contract to create a high school for the town of Bedford. (Roberge, Dist 9; Hawkins, Hills 18; Graham, Hills 18: Education)

05-0410

SB 13, relative to placement and removal of political advertising. (Roberge, Dist 9; Graham, Hills 18: Transportation and Interstate Cooperation)

05-0411

SB 14, relative to special school district meetings to vote on tuition contracts. (Roberge, Dist 9; Hawkins, Hills 18: Internal Affairs)

05-0413

SB 15-LOCAL, relative to the approval process for tuition contracts with schools. (Roberge, Dist 9; Graham, Hills 18; Hawkins, Hills 18: Education)

05-0419

SB 16, establishing a pharmacy oversight committee. (Johnson, Dist 2: Health and Human Services)

05-0559

SB 17, relative to the definition of educational institution for the purpose of higher education loans. (D'Allesandro, Dist 20; Larsen, Dist 15; Rush, Merr 7; Craig, Hills 9: Education)

05-0560

SB 18, relative to sales of tickets for pure lotteries by those not employed by the lottery commission. (D'Allesandro, Dist 20; Griffin, Rock 4; Craig, Hills 9: Ways and Means)

05-0561

SB 19, relative to qualifications to sell lottery tickets. (D'Allesandro, Dist 20; Griffin, Rock 4; Craig, Hills 9: Judiciary)

05-0753

SB 21, relative to voluntary mediated agreements in adoptions. (D'Allesandro, Dist 20; Craig, Hills 9: Judiciary)

05-0919

SB 22, authorizing the Holden School of Nursing to confer degrees. (Foster, Dist 13; Jean, Hills 25; Lasky, Hills 26: Education)

05-0947

SB 23, relative to membership on the public water access advisory board. (Johnson, Dist 2; R. L'Heureux, Hills 19: Environment and Wildlife)

05-0987

SB 24, relative to disposition upon death of patient accounts in nursing homes. (Foster, Dist 13: Judiciary)

05-1030

SB 26, requiring identification to obtain a ballot. (Martel, Dist 18: Internal Affairs)

05-0593

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month (Barnes, Dist 17; Boyce, Dist 4; Bragdon, Dist 11; Burling, Dist 5; Fuller Clark, Dist 24; Clegg, Dist 14; D'Allesandro, Dist 20; Eaton, Dist 10; Estabrook, Dist 21; Flanders, Dist 7; Foster, Dist 13; Gallus, Dist 1; Gatsas, Dist 16; Gottesman, Dist 12; Green, Dist 6; Hassan, Dist 23; Johnson, Dist 2; Kenney, Dist 3; Larsen, Dist 15; Letourneau, Dist 19; Martel, Dist 18; Morse, Dist 22; Odell, Dist 8; Roberge, Dist 9: Public and Municipal Affairs)

AMENDMENT TO SENATE RULES

Senator Gatsas offered the following amendment:

Rule #18. Drafting of Bills

(g) Legislation returned from the non-originating body, with an amendment, shall not be re-referred to committee. The legislation shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference. ***Adoption of any recommendation under this paragraph shall require a majority vote of the Senate membership voting in open session.*** Adoption of a motion to Nonconcur kills the legislation.

SENATOR GATSAS: Thank you, Mr. President. I'd like to introduce an amendment to the rules. It would be Rule 18. If I could have the Assistant Clerk pass that out. What this rule basically does is, it is 18 (g). It reads "Legislation returned from the non-originating body, with an amendment, shall not be re-referred to committee. The legislation shall have one of the following recommendations: Concur, Nonconcur, Nonconcur and Request a Committee of Conference." The addition is in dark print. It says, "Adopting any recommendation under this paragraph shall require a majority vote of the Senate membership voting in open session. Adoption of a motion to Nonconcur kills the legislation." I would like to speak on the amendment. What this basically does, and I know that our rules are very important to us here in the Senate, because you have two other session days to have the ability to amend rules. That is there for a reason, because these rules are very important to us. This rule is probably one of the most important rules to not only members of this Senate, but every one of the constituents that we represent, because we are sent here by constituents and we are supposed to represent them. Representing them means that we should have a vote on every single piece of legislation. So this, I'm sure, was an oversight. I'm sure people have said it may keep us here until 12:30 – 1:00 at night. I have been here at 12:30 to 1:00 at night driving home in snowstorms. I think that we, as a body, should have

an opportunity to vote on every piece of legislation that comes from the non-originating body. This rule change would say it takes a super majority for us to send bills to a Committee of Conference without a vote on it. I don't think that we're doing justice to our constituents without taking a vote on a piece of legislation before we send it to a Committee of Conference. This rule here makes us take a vote, unless the super majority decides they want to send it to a Committee of Conference. I don't think there is anything wrong with that because the rule changes obviously are very obvious. It takes a super majority to change any rule after the third session day. That is what we are here for. To do the people's work. We should understand the people's work and we should respect that because we were all sent here for the same thing. So I think that I would ask you to vote this rule change in, because it is not about us, it is about the people that we represent. It is important that we never forget that, 'cause this body is only as big as the people in the state of New Hampshire, and they should all have that opportunity. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the amendment. My colleague from Manchester is correct. It is all about the people. People that we represent. To make anything a super majority, to get it done in the Senate, doesn't do justice to the people that we represent, it does just the opposite. Under the rule, the way that it sits now, if we decide that the House is taking a long time and there is two or three bills over there that haven't gotten to us, we stand up, or I stand up last year, and offer a new motion that says anything left in the House that hasn't come to us automatically goes to a Committee of Conference. This body has the opportunity to vote yea or nay. It doesn't take a super majority to vote yea or nay; it is a simple majority. If there are bills that you don't want automatically have go to the Committee of Conference, you stand up and you object and you vote on it, with a simple majority the way that we are supposed to work, not a super majority. Imagine if every bill had to have a super majority. We'd never get anything done. So I would say that, after looking and having Research do a quick look, and I believe that they looked at eight decades, and for eight decades we haven't had the need to have that in there because the Senate has always been able to vote in a majority sense, and not a super majority, I don't think that we need to change that. So I urge my colleagues to vote no and to allow each of us to vote, when the time comes, on whether or not we want the bills to go to a Committee of Conference as a group, or to not go to a Committee of Conference as a group. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator Clegg, then is it your suggestion that we amend the rule that says any rule change after the third session day needs a super majority to change it, and we should go back to the thought that you just said that it should be just a simple majority to change rules?

SENATOR CLEGG: That is not what I said, Senator. I said that, when it comes to voting on laws and the people's business, that a simple majority is all that is necessary. You are attempting to make that a super majority.

SENATOR GATSAS: No, my intent, Senator, would you believe, is to make sure we have an opportunity to vote on every piece of legislation? So, if you want to agree that we should change the Senate Rule that says that it takes a super majority to change any rule to a simple majority, then I don't have a problem with that, because at that point, we can change that at the end of the session when you want to send them to a Committee of Conference.

SENATOR CLEGG: Senator, I'm fine with the rules as they stand. I don't think that we need to make super majority decisions of whether something goes to Committee of Conference. I am still opposed to the change in the rule, but to allow the rules to remain the way they are is fine with me.

SENATOR GATSAS: Thank you.

SENATOR MARTEL: Thank you, Mr. President. This, I believe, is a piece of legislation in which both sides are right but, as was stated earlier, when eighty years or eight decades have been investigated and this has not been found anyplace, it makes it a little confusing as to why we really want to impose this at this point in time in the Senate. Understanding, understanding, the issues, okay, that we were faced with last year and what we are trying to prevent this year. Yes, there was some dissension last year on some bills. But the vast majority of legislation didn't have that type of dissension that we had late in the year. I agree that the problems we had at the end of the year last year, should not have taken place. The issues that we addressed, were addressed then, and also during the...between sessions here. But, I would not like to see us start on a negative note, going to try and get some legislation passed in order to try to create an image, okay, that one side is against the other side on this issue. I know that we represent 52,000 people. We all do. The point is, that they deserve the best representation we can give them. I believe we do that even though we do make mistakes. No one has asked me to commit myself to any votes here on this bill. I am still passing it through my mind as to what I think my constituency, what I would like to see happen with this legislation. I certainly would not like us to begin on a negative side. I want us to stay positive if we can this year. I think the people that we represent deserve that. I think that we in the Senate deserve the same respect. So, Mr. President, I am not going to urge my Con-Frères and Con-Soeurs as to how they would like to vote or how they should vote, and how I am going to vote, but I would leave it at that. I would just like to make and to plead to make having peace and honor in this chamber once again this year like we had in the past. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. I hear eighty years. So that tells me for eighty years the Senate has done the right thing. We haven't had need for it. Reading the paper, listening to radio and TV last year, last session, Secretary of State, who is certainly an honored and dignified person, had never seen anything like happened last time either. So eighty years back, I guess, everything went cool and there wasn't any need for it. After what happened last year and the black eye that this Senate got, I think there is a need for something. Thank you.

The question is on the adoption of the amendment.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Green, Roberge, Gatsas, Barnes, Martel.

The following Senators voted No: Johnson, Kenney, Boyce, Burling, Flanders, Odell, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

Yeas: 6 - Nays: 18

Motion failed.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session and that the business of the late session be in order at the present time.

Adopted.

LATE SESSION**PRESIDENT'S STAFF**

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Jay W. Flanders, Deputy Chief of Staff and Policy Director
Donna L. Morin, Executive Assistant
Nancy L. Nolin, Receptionist

LEGAL COUNSEL

Richard J. Lehmann

COMMUNICATIONS DIRECTOR

Mark C. Vattes

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Marlene D. Taylor, Executive Secretary
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Tammy L. Wright, Assistant Senate Clerk
Brenda L. Mento, Journal Clerk
Ann Marie Daniels, Calendar Clerk
Edward R. Hebert, Status Information Technician
Henry W. Wilson, Senate Sergeant-At-Arms
John J. Byrnes, Sr., Senate Doorkeeper
Malcolm A. Richards, Senate Assistant Doorkeeper
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ANNOUNCEMENTS

SENATOR EATON (IN THE CHAIR): Without objection, I will direct the Clerk to enter a list of the full Senate staff in today's Journal. I want to thank all of you newcomers, all of you people that have been here before. As I have said many times, you're the people that make us look good and do a tremendous amount of work that is not seen by anybody and we certainly do appreciate it. We never overlook that. Thank you all.

RESOLUTION

Senator Clegg moved that the Senate adjourn to 11:00 a.m. tomorrow, January 6, 2005.

Adopted.

Adjournment.

January 6, 2005

The Senate met at 11:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning everybody! In ancient Rome, the office of augur was one of greatest positions of influence and power, because the augur was a religious official who foretold events by observing and interpreting signs and omens. Anyone who could see in the future, the thinking was, would be a pretty good person to follow. The word inaugurate has as its root the word augur. I doubt if the soon to be governor would claim for himself the ability to see into the future in any detail, and I hope you don't either. But I do know this. For him and for you, and for all of us, good leadership has to do with looking forward tomorrow and not backwards to yesterday. Thank you so much for being willing to do that work for us and with us. I think we better pray.

Lord, of all tenses, past, present and future, as the good and dedicated people who work in this old building look toward the horizon that is tomorrow, grant to them enough powers of augury to see a bit over that shadowy edge and lead us together toward authentic inauguration. Amen

Senator Johnson led the Pledge of Allegiance.

Senators Bragdon, Estabrook and Green are excused for the day.

INTRODUCTION OF GUESTS

SENATOR D'ALLESANDRO (RULE #44): Thank you, Mr. President. I have a sad note. This is a great day for our state and a great day for everyone here, but our former President of the Senate, David Nixon's daughter passed away. The Nixon family has undergone some awful tragedies in the last few months. His daughter passed away. I think most of you know that, aside from being just a wonderful guy, that Dave Nixon is the kind of guy that reaches out to everybody. If there is ever a situation where someone has need, Dave Nixon is always there. I have called upon

him on numerous situations to aid people. He is always there. He is the most giving guy that I know. We know recently Dave lost his grandson in a very tragic accident at St. Paul's School. I found out last evening as I was at a meeting that Dave's daughter passed away in Vermont. I understand that her services will be on Saturday and on Sunday in New Boston. Saturday will be at the funeral home and Sunday will be a service in New Boston. If I get more information, I will give it to you. I would hope that all of us would recognize first of all, our mortality, but also recognize that the love and affection that we can share with our colleagues is something that helps them get through these difficult situations. I don't think anyone has had more difficult situations than Dave Nixon has had in these last six months. So I know he would appreciate certainly remembering his daughter in your prayers and, if you have an opportunity, maybe drop him a note just to let him know that you are there, if indeed he does need your support. You know, life's not fair. It is just not fair. I think we recognize that. But the thing that we can all do in tragedies like this is to support one another and show people that we care, we're concerned, and we want to do something if something can be done. Thank you, Mr. President.

SENATOR EATON (IN THE CHAIR): I would like to have everyone stand for a moment of silence. Thank you.

HOUSE MESSAGE

The House of Representatives is ready to meet in Joint Convention for the purpose of hearing the report of the Joint Committee appointed to compare and count the votes for Governor and Executive Council, for the Inauguration of the Governor, and for the taking of the oath by the Executive Council.

In recess for Joint Convention.

Out of recess.

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from Senate Bill 28 to Senate Bill 31, shall be by this resolution read a first and second time by the therein listed titles and referred to the designated committees.

SENATOR EATON: Thank you, Senator Flanders. I think we will say Senate Bill 28 to Senate Bill 31.

Adopted.

First and Second Reading and Referral

05-0757

SB 28, relative to confidentiality and workers' compensation. (Flanders, Dist 7; Clegg, Dist 14; Foster, Dist 13; Kurk, Hills 7; Banks and Insurance)

05-0918

SB 29, relative to processing absentee ballots. (D'Allesandro, Dist 20; Barnes, Dist 17; Boyce, Dist 4; Burling, Dist 5; Fuller Clark, Dist 24; Clegg, Dist 14; Flanders, Dist 7; Foster, Dist 13; Gallus, Dist 1; Gottesman, Dist 12; Hassan, Dist 23; Johnson, Dist 2; Kenney, Dist 3; Larsen, Dist 15; Letourneau, Dist 19; Martel, Dist 18; Odell, Dist 8; Roberge, Dist 9; Craig, Hills 9: Internal Affairs)

05-0937

SB 30, establishing the Collaborative Practice for Emergency Contraception Act. (D'Allesandro, Dist 20; Odell, Dist 8; Keans, Straf 1; Norelli, Rock 16; Craig, Hills 9: Health and Human Services)

05-0938

SB 31, establishing a committee to study a recycling fee for automobiles. (D'Allesandro, Dist 20; Gallus, Dist 1; Craig, Hills 9: Transportation and Interstate Cooperation)

RESOLUTION

Senator Johnson moved that the Senate now adjourn from the early session and that the business of the late session be in order at the present time.

Adopted.

LATE SESSION ANNOUNCEMENTS

A RESOLUTION expressing the condolences and concern of the New Hampshire Senate for the victims of the recent earthquake and tsunamis in Indonesia , South and South-east Asia, Somalia and Kenya

Whereas, on Sunday, December 26, 2004, the largest earthquake in more than 40 years occurred at a 9.0 magnitude off the coast of Indonesia; and

Whereas, this earthquake was directly responsible for the devastating tsunamis in South and Southeast Asia, Somalia and Kenya; and

Whereas, according to the current accounting, these tsunamis have resulted in the loss of more than 150,000 lives; and

Whereas, there are currently more than one million residents who have been rendered homeless, and thousands still missing; and

Whereas, these natural events have been recognized as a catastrophic humanitarian emergency and an international tragedy; and

Whereas, the devastation which occurred concerns nations around the globe, and not just the countries directly affected; and

Whereas, the aid which has been given is not an end, but rather only a beginning of international support; and

Whereas, the New Hampshire Senate joins the nations of the world in expressing condolences and the deepest sympathies to the victims and their families; and

Whereas, the state of New Hampshire and its citizens join the global community in acknowledging the devastation of these catastrophic events.

Now therefore, pursuant to a motion of Senator Thomas R. Eaton:

Be it resolved, by the New Hampshire Senate that this legislative body and the constituents it represents hereby offer their heartfelt condolences and deepest sympathies to all those affected by this natural disaster and human tragedy.

Senators: John T. Gallus, Carl R. Johnson, Joseph D. Kenney, Robert K. Boyce, Peter Hoe Burling, Richard P. Green, Robert B. Flanders, Robert Odell, Sheila Roberge, Peter E. Bragdon, David M. Gottesman, Joseph A. Foster, Robert E. Clegg, Jr., Sylvia B. Larsen, Theodore L. Gatsas, John S.

Barnes, Jr., Andre' A. Martel, Robert J. Letourneau, Lou D'Allesandro, Iris W. Estabrook, Charles, W. Morse, Margaret Wood Hassan, Martha Fuller Clark

Thomas R. Eaton
President of the Senate

Attest:
Steven J. Winter
Clerk of the Senate

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation and receiving messages.

Adopted.

In recess to the Call of the Chair.

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from 11 to CACR 8, shall be by this resolution read a first and second time by the therein listed titles and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

05-0299

SB 11-FN, extending the local property tax exemption for wooden poles and conduits. (Boyce, Dist 4; D'Allesandro, Dist 20; Odell, Dist 8; Almy, Graf 11; Ingram, Rock 4: Energy and Economic Development)

05-0562

SB 20-FN, relative to an increase in lottery ticket prices. (D'Allesandro, Dist 20; Letourneau, Dist 19; Griffin, Rock 4; Craig, Hills 9: Ways and Means)

05-1002

SB 25-FN, relative to the allocation of a portion of unrefunded road tolls to the dam maintenance fund. (Johnson, Dist 2; Spang, Straf 7; M. Blanchard, Rock 16: Ways and Means)

05-0482

SB 27-FN, relative to licensing facilities and home health agencies certified by the Joint Commission on the Accreditation of Healthcare Organizations. (Kenney, Dist 3; Martel, Dist 18; C. Brown, Carr 1; J. Martin, Carr 5; Olimpio, Carr 5; Patten, Carr 4: Health and Human Services)

05-0948

SB 32-FN, authorizing the department of safety to issue special amateur radio operator plates. (Johnson, Dist 2; Rosen, Belk 4: Transportation and Interstate Cooperation)

05-1033

SB 34-FN, relative to reimbursement rates for child care. (Martel, Dist 18; Pilliod, Belk 5: Health and Human Services)

05-0346

SB 36-FN, assessing a fee on all dogs and cats sold at retail that are not sexually sterilized, to be deposited in the companion animal neutering fund. (Roberge, Dist 9: Ways and Means)

05-0571

SB 37, relative to disclosure of expert testimony. (Clegg, Dist 14; Foster, Dist 13; Gottesman, Dist 12; Odell, Dist 8; Gallus, Dist 1: Judiciary)

05-0756

SB 38-FN, relative to school building aid for certain receiving districts. (D'Allesandro, Dist 20; Martel, Dist 18; Craig, Hills 9: Education)

05-0771

SB 39, relative to disinterment of dead bodies. (Johnson, Dist 2; B. Williams, Graf 8: Public and Municipal Affairs)

05-0772

SB 40, permitting special school district meetings to be held in conjunction with the biennial election in certain school districts. (Johnson, Dist 2; B. Williams, Graf 8: Internal Affairs)

05-0790

SB 41, relative to penalties for certain OHRV violations. (Flanders, Dist 7; Odell, Dist 8; Alger, Graf 6: Environment and Wildlife)

05-0821

SB 42, establishing a pharmaceutical study commission to study direct purchasing of prescription medication by the state. (Burling, Dist 5: Health and Human Services)

05-0894

SB 43, relative to the administration of estates of persons presumed dead. (Foster, Dist 13; Rowe, Hills 6: Judiciary)

05-0910

SB 44, establishing a study committee on student credit card debt and regulation of credit card solicitation on college campuses. (Johnson, Dist 2; Alger, Graf 6: Banks and Insurance)

05-0911

SB 45-LOCAL, establishing a tax stabilization fund for the Hanover school district. (Burling, Dist 5; Nordgren, Graf 9; Bleyler, Graf 9; Benn, Graf 9; Sokol, Graf 9: Executive Departments and Administration)

05-0915

SB 46, relative to the duties of law enforcement officials upon receiving reports of missing adults. (Barnes, Dist 17: Judiciary)

05-0925

SB 47, relative to the definition of "party" or "parties" for the apportionment of fault in civil litigation. (Gottesman, Dist 12; Clegg, Dist 14: Judiciary)

05-0926

SB 48-FN, relative to a prohibition on "peeping Toms." (Estabrook, Dist 21; Johnson, Dist 2; M. Smith, Straf 7; Wall, Straf 7; Spang, Straf 7; Rous, Straf 7; Miller, Straf 7: Judiciary)

05-0949

SB 50, establishing a committee to study forming an independent board of psychology. (Burling, Dist 5: Executive Departments and Administration)

05-0963

SB 51, relative to jurisdiction of the public utilities commission over rural electric cooperatives. (Boyce, Dist 4: Energy and Economic Development)

05-0964

SB 52, establishing a study committee to review the state employee incentive and reward program. (Boyce, Dist 4: Internal Affairs)

05-0979

SB 53-FN, relative to increased funding for publication of certain materials by the department of environmental services and changing the title of chief operations officer to chief financial officer in the department of environmental services. (Clegg, Dist 14: Executive Departments and Administration)

05-0993

SB 54, clarifying the role of a guardian ad litem in guardianship proceedings. (Foster, Dist 13: Judiciary)

05-0399

SB 55, relative to the New Hampshire film and television commission and state promotional initiatives. (Johnson, Dist 2; Alger, Graf 6: Energy and Economic Development)

05-0521

SB 56, relative to nonuse of a seat belt as evidence in a civil action. (Clegg, Dist 14; Flanders, Dist 7; Martel, Dist 18; Morse, Dist 22; Estabrook, Dist 21; Hunt, Ches 7; King, Coos 1; Stone, Rock 1: Judiciary)

05-0602

SB 57, establishing a commission to study ways to alleviate medical malpractice premiums for high risk specialties. (Foster, Dist 13; Gottesman, Dist 12; Estabrook, Dist 21; Clegg, Dist 14; D'Allesandro, Dist 20; Gallus, Dist 1; Lasky, Hills 26; Price, Hills 26: Executive Departments and Administration)

05-0990

SB 59, relative to the general powers and duties of guardianship. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

05-0991

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

05-0992

SB 61, relative to judges giving notice of intent to retire. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

05-0304

SB 64, establishing a committee to study small group health insurance plans. (Hassan, Dist 23; Fuller Clark, Dist 24; Gallus, Dist 1; Burling, Dist 5; Marshall Quandt, Rock 13: Banks and Insurance)

05-0309

SB 65, ratifying changes to the state building code adopted by the state building code review board. (Clegg, Dist 14; O'Neil, Rock 15: Executive Departments and Administration)

05-0341

SB 66, establishing a commission to study the creation of a northern New England purchasing alliance for small business health insurance. (Fuller Clark, Dist 24; Hassan, Dist 23: Banks and Insurance)

05-0342

SB 67, eliminating health status as a rating factor for small group health insurance. (Fuller Clark, Dist 24; Foster, Dist 13: Banks and Insurance)

05-0347

SB 68, relative to certain costs for the development of a high school in the town of Bedford. (Roberge, Dist 9; Martel, Dist 18; Graham, Hills 18: Education)

05-0369

SB 69-LOCAL, relative to certain insurance liens. (Gallus, Dist 1; Clegg, Dist 14; Green, Dist 6; Kenney, Dist 3; Buzzell, Coos 4; Lary, Coos 3; Mears, Coos 4; Morneau, Coos 4; Theberge, Coos 4; Banks and Insurance)

05-0402

SB 70, relative to the Timothy and Abigail B. Walker Lecture Fund. (Larsen, Dist 15; DeJoie, Merr 11; Gile, Merr 10: Public and Municipal Affairs)

05-0412

SB 71, relative to amending warrant articles in towns that have adopted the official ballot form of town meeting. (Roberge, Dist 9: Internal Affairs)

05-0488

SB 72, relative to the licensing of public adjusters. (Flanders, Dist 7; Hunt, Ches 7: Banks and Insurance)

05-0489

SB 73, relative to market conduct record retention and production. (Flanders, Dist 7; Hunt, Ches 7: Banks and Insurance)

05-0492

SB 74, making certain technical changes in the insurance laws. (Flanders, Dist 7; Hunt, Ches 7: Banks and Insurance)

05-0754

SB 75-FN, relative to the statute of limitations for a civil actions based upon a sexual assault case. (D'Allesandro, Dist 20; Gottesman, Dist 12; Flanders, Dist 7; Roberge, Dist 9; Kenney, Dist 3; Craig, Hills 9; Mooney, Hills 19; Norelli, Rock 16: Judiciary)

05-0782

SB 76, relative to the extension of restraining orders under the domestic violence protection act. (Clegg, Dist 14; Larsen, Dist 15: Judiciary)

05-0789

SB 77, relative to the review of proposed health care provider contracts. (Flanders, Dist 7; Clegg, Dist 14; Odell, Dist 8; Barnes, Dist 17; Martel, Dist 18; Hunt, Ches 7; S. Francoeur, Rock 15; MacKay, Merr 11: Banks and Insurance)

05-0791

SB 78, relative to payment of health care providers by health carriers. (Flanders, Dist 7; Clegg, Dist 14; Odell, Dist 8; Barnes, Dist 17; Martel, Dist 18; Hunt, Ches 7; S. Francoeur, Rock 15; MacKay, Merr 11: Banks and Insurance)

05-0837

SB 79, relative to the governance of the regional community-technical colleges. (Odell, Dist 8; Larsen, Dist 15; Johnson, Dist 2; D'Allesandro, Dist 20; Clegg, Dist 14; Ryan, Merr 2; Gile, Merr 10; S. L'Heureux, Merr 9; Thomas, Belk 5; S. Scamman, Rock 13: Education)

05-0913

SB 80, permitting the Emerald Lake village district to enact and enforce regulations to protect its public water supply. (Flanders, Dist 7; L. Elliott, Hills 1; Carew, Hills 1; Essex, Hills 1: Environment and Wildlife)

05-0930

SB 81, providing recourse for homeowners in manufactured housing parks who are confronted with unjustifiable rent increases. (Flanders, Dist 7; Odell, Dist 8; Fuller Clark, Dist 24; Hassan, Dist 23; Millham, Belk 5: Public and Municipal Affairs)

05-0934

SB 82, requiring a course in civics for high school graduation. (D'Allesandro, Dist 20; Estabrook, Dist 21; Foster, Dist 13; Burling, Dist 5; Hassan, Dist 23; Larsen, Dist 15; Fuller Clark, Dist 24; Craig, Hills 9: Education)

05-0946

SB 83, establishing a commission to study issues relative to the comprehensive shoreland protection act and the public waters of the state. (Johnson, Dist 2; Millham, Belk 5: Environment and Wildlife)

05-0951

SB 84, relative to live racing at licensed pari-mutuel facilities. (Johnson, Dist 2: Ways and Means)

05-0966

SB 85, relative to expenses of operating bingo games. (Boyce, Dist 4; Martel, Dist 18; Boyce, Belk 5; G. Katsakiores, Rock 5; P. Katsakiores, Rock 5; Hunt, Ches 7: Ways and Means)

05-0970

SB 86, permitting on-site samples and retail sales by liquor manufacturer licensees. (Odell, Dist 8; Flanders, Dist 7; Reardon, Merr 11; Hunt, Ches 7: Executive Departments and Administration)

05-0983

SB 87, relative to extension of tax liens by the department of revenue administration. (Clegg, Dist 14: Ways and Means)

05-0998

SB 88, relative to emergency medical transportation. (Johnson, Dist 2: Public and Municipal Affairs)

05-0325

SB 90-FN-A-L, relative to kindergarten construction aid. (Sen. Morse, Dist 22; Rep. Major, Rock 8; Rep. J. Garrity, Rock 6; Rep. Winchell, Rock 6: Finance)

05-0348

SB 91-FN, relative to an increase in the co-payment for participation in the animal population control program. (Roberge, Dist 9; Wendelboe, Belk 1: Environment and Wildlife)

05-0668

SB 96-FN, establishing Rotary Foundation special number plates. (Roberge, Dist 9; Craig, Hills 9; Graham, Hills 18; Gonzalez, Hills 17: Transportation and Interstate Cooperation)

05-0694

SB 98-FN, relative to issuing duplicate registrations for off highway recreational vehicles. (Letourneau, Dist 19; Packard, Rock 3: Transportation and Interstate Cooperation)

05-0695

SB 99-FN, relative to the penalty for failure to file a property inventory form. (Letourneau, Dist 19; Dowd, Rock 5: Ways and Means)

05-0736

SB 100-FN, allowing the president of the National Education Association-New Hampshire to remain a member of the state retirement system. (D'Allesandro, Dist 20; Estabrook, Dist 21; Gallus, Dist 1; Larsen, Dist 15; Craig, Hills 9: Executive Departments and Administration)

05-0932

SB 103-FN-A-LOCAL, relative to a shorefront maintenance fee. (Johnson, Dist 2: Environment and Wildlife)

05-0943

SB 105, granting the executive director of fish and game authority to promote hunting, fishing, and wildlife-related activities. (D'Allesandro, Dist 20; Craig, Hills 9: Environment and Wildlife)

05-0952

SB 108-FN, relative to newborn screening tests and fees for newborn screening tests. (Martel, Dist 18; Pilliod, Belk 5; Gile, Merr 10; Pilotte, Hills 16: Health and Human Services)

05-0965

SB 111, relative to persons conducting securities broker-dealer and investment advisor businesses. (Boyce, Dist 4; Clegg, Dist 14; Letourneau, Dist 19; Odell, Dist 8; Newton, Straf 1; Weyler, Rock 8: Banks and Insurance)

05-0971

SB 112-FN, relative to viatical settlements. (Flanders, Dist 7; Roberge, Dist 9; MacKay, Merr 11: Banks and Insurance)

05-0976

SB 113-FN, relative to the use of federal funds for technology improvements within the department of employment security. (Flanders, Dist 7; Boyce, Dist 4; Bragdon, Dist 11; Gallus, Dist 1; Letourneau, Dist 19; Kenney, Dist 3; Bridle, Rock 15; L. Elliott, Hills 1; Weyler, Rock 8: Executive Departments and Administration)

05-0982

SB 116, relative to payment procedures for the utility property tax. (Clegg, Dist 14: Ways and Means)

05-0984

SB 117-FN, relative to utility property tax appeals. (Clegg, Dist 14: Ways and Means)

05-1000

SB 119, establishing a committee to study exempting acute care rehabilitation from the nursing home moratorium. (Kenney, Dist 3: Health and Human Services)

05-1015

SB 120, relative to the purchase of rail properties. (Morse, Dist 22; Gallus, Dist 1; Letourneau, Dist 19; Rausch, Rock 5; Belanger, Rock 4: Transportation and Interstate Cooperation)

05-1021

SB 121, relative to all terrain vehicle trails and relative to the regulation of off highway recreational vehicles by a political subdivision. (Flanders, Dist 7; Alger, Graf 6: Environment and Wildlife)

05-1020

SB 122, relative to the procedure for approval of solid waste facilities. (Bragdon, Dist 11: Environment and Wildlife)

05-1023

SB 123, relative to the liability of pet shops for the sale of sick animals. (Hassan, Dist 23; Fuller Clark, Dist 24; Roberge, Dist 9: Environment and Wildlife)

05-1024

SB 124, relative to the regulation of real estate brokers by the real estate commission. (Gallus, Dist 1; Emerton, Hills 7: Public and Municipal Affairs)

05-1038

SB 126, establishing a committee to study the appeals process in cases between landlords and tenants. (Boyce, Dist 4; Roberge, Dist 9; Clegg, Dist 14; Wendleboe, Belk 1: Public and Municipal Affairs)

05-1018

SB 132, relative to the board of marital mediator certification. (Bragdon, Dist 11; Eaton, Dist 10; Gottesman, Dist 12; Franklin, Sull 2: Judiciary)

05-1022

SB 133-FN, relative to mooring permits. (Flanders, Dist 7; L. Elliott, Hills 1; Carew, Hills 1; Essex, Hills 1: Environment and Wildlife)

05-1028

SB 134, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders. (Martel, Dist 18: Judiciary)

05-1035

SB 136-L, relative to curbside voting at polling places by persons with disabilities. (Sen. Roberge, Dist 9; Rep. Graham, Hills 18; Rep. Hawkins, Hills 18; Rep. D.L. Christensen, Hills 19: Internal Affairs)

05-1036

SB 137-FN-A, relative to the Conway Branch railroad and making an appropriation therefor. (Kenney, Dist 3; McConkey, Carr 3: Finance)

05-0330

SB 139, relative to admission into evidence of certain medical bills, reports, and records. (Gottesman, Dist 12; Foster, Dist 13; Craig, Hills 9: Judiciary)

05-0370

SB 140, relative to the acceptance of in-lieu payments for the preservation of upland areas adjacent to wetland areas. (Gallus, Dist 1; Johnson, Dist 2; D'Allesandro, Dist 20; Martel, Dist 18; Roberge, Dist 9; Whalley, Belk 5; Alger, Graf 6; Dickinson, Carr 1; R. L'Heureux, Hills 19; Theberge, Coos 4: Environment and Wildlife)

05-0371

SB 141-LOCAL, authorizing the establishment of certain reserve funds by the Gorham, Randolph, and Shelburne school districts. (Gallus, Dist 1; Odell, Dist 8; D'Allesandro, Dist 20; Morse, Dist 22; Roberge, Dist 9; Theberge, Coos 4; S. Eaton, Graf 1; King, Coos 1: Education)

05-0451

SB 142, extending the reporting date of the commission to study issues relative to groundwater withdrawals. (Johnson, Dist 2: Environment and Wildlife)

05-0522

SB 143, relative to the adoption and use of impact fees for public open space. (Clegg, Dist 14; Packard, Rock 3; McKinney, Rock 3; Carson, Rock 3; Introne, Rock 3: Public and Municipal Affairs)

05-0703

SB 149-FN-A, relative to exemptions from the communications services tax. (Boyce, Dist 4; Letourneau, Dist 19; Thomas, Belk 5: Energy and Economic Development)

05-0907

SB 155-FN, prohibiting rafting of boats on lakes and ponds. (Johnson, Dist 2; Whalley, Belk 5; Dickinson, Carr 1; Patten, Carr 4: Transportation and Interstate Cooperation)

05-0367

SB 196, establishing a joint legislative committee to study medical malpractice insurance rates. (Fuller Clark, Dist 24: Judiciary)

05-0743

SB 198-FN, relative to regulating home contractors. (D'Allesandro, Dist 20; Foster, Dist 13; M. Cooney, Graf 7: Public and Municipal Affairs)

05-0838

SB 199, establishing exemptions from certain administrative requirements for the department of regional community-technical colleges. (Odell, Dist 8; Larsen, Dist 15; Johnson, Dist 2; D'Allesandro, Dist 20; Clegg, Dist 14; Ryan, Merr 2; Gile, Merr 10; S. L'Heureux, Merr 9; Thomas, Belk 5; S. Scamman, Rock 13: Executive Departments and Administration)

05-0923

SB 202, relative to property taxable as utility property. (Larsen, Dist 15; D'Allesandro, Dist 20; E. Blanchard, Merr 10; Shurtleff, Merr 10: Ways and Means)

05-0955

SB 203, relative to leases and contracts for buildings or lands owned by the fish and game department. (Gallus, Dist 1; D'Allesandro, Dist 20; Roberge, Dist 9; R. L'Heureux, Hills 19; Stohl, Coos 1; S. Eaton, Graf 1; L. Elliott, Hills 1: Capital Budget)

05-1042

SB 204, relative to party columns on ballots. (Larsen, Dist 15; Burling, Dist 5; Fuller Clark, Dist 24; Craig, Hills 9; Norelli, Rock 16; J. Tilton, Merr 6: Internal Affairs)

05-1007

SB 205, relative to private actions under the consumer protection act. (Odell, Dist 8; Flanders, Dist 7: Judiciary)

05-0935

SB 207-FN, establishing the crime of assault against the elderly. (D'Allesandro, Dist 20; Larsen, Dist 15; Morse, Dist 22; Martel, Dist 18; Gatsas, Dist 16; Estabrook, Dist 21; Hassan, Dist 23; Gottesman, Dist 12; Fuller Clark, Dist 24; Ingram, Rock 4; Winchell, Rock 6: Judiciary)

05-0972

SB 211-FN, relative to pharmaceutical marketers. (Letourneau, Dist 19; Barnes, Dist 17; Gallus, Dist 1; Packard, Rock 3; Dowd, Rock 5; DeJoie, Merr 11: Executive Departments and Administration)

05-0985

SB 212, relative to the railroad tax. (Clegg, Dist 14: Ways and Means)

05-0441

SCR 1, endorsing a farm viability task force. (Barnes, Dist 17: Environment and Wildlife)

05-1025

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21). (Kenney, Dist 3: Transportation and Interstate Cooperation)

05-0696

SCR 3, relative to the Boy Scouts of America. (Letourneau, Dist 19; P. Smith, Rock 3; Packard, Rock 3; Dowd, Rock 5; Major, Rock 8: Public and Municipal Affairs)

05-1037

SCR 4, supporting federal funding for Lyme disease research. (Kenney, Dist 3: Health and Human Services)

05-0343

CACR 7, Relating to: restricting the use of all funds deposited into the education trust fund to education funding. Providing that: all funds deposited into the education trust fund shall be used exclusively for elementary and secondary education. (Fuller Clark, Dist 24; Larsen, Dist 15: Finance)

05-0345

CACR 8, Relating to: the highway fund. Providing that: the highway fund may be used for highways and intermodal transportation projects. (Fuller Clark, Dist 24: Transportation and Interstate Cooperation)

Out of recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

January 27, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! In 1847, at its town meeting, the city of Concord passed an ordinance outlawing three perceived threats to the public wellbeing: bowling, taverns and circuses. That was then; this is now. Despite the wishes and legislative action of those Concord voters, I have a three-year-old friend who regularly makes visits to the bowling alley located one mile down the street from where we're standing. On many days when you come to Concord and I see you, I know that lunch time frequently finds you across the street at one of those emporiums where you can eat and drink. Each summer, just across the Merrimack River in the parking lot of the Everett Arena, the circus comes to town with amusement rides, fried dough, and other varieties of entertainment. Bowling, taverns, and circuses, right here in River City! All this might seem humorous to you, but, as you lead us, let the point be clear. Yesterday's good decisions need to be regularly revisited if their underlying purpose is going to be served. It wasn't about bowling; it was about families. It wasn't about taverns; it was about public drunkenness. It wasn't about circuses; it was about exploitation. Argue about the means and methods, but be in harmony about what you are here to promote - human dignity. Let us pray.

Powerful, patient and persistent God, unpredictable in every way, save for love, guide and guard these good men and women, commissioned by You, to lead. May they feel the pressure of Your desires and the comfort of Your care – as together, they make the choices for us that will define our tomorrow.
Amen

Senator Kenney led the Pledge of Allegiance.

Senator Green is excused for the day.

INTRODUCTION OF GUESTS COMMITTEE REPORTS

SB 28, relative to confidentiality and workers' compensation. Banks and Insurance Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This is a rerun. If you recall last year, I came in with an exact bill, that was Senate Bill 423, which was a result of the James Sokolove letter. Just briefly, at that time, people were able to go to the Labor Department and get four pieces of information, which was address, date of injury and where they worked. As a result of that, they were able to send these letters out. We passed a bill, as it was written, by the Attorney General's Office and the attorney at the Labor Department, which we felt stopped this type of thing. Unfortunately, the bill got amended in the House, and I am sure unintentionally, but as a result of the amendment in the House, it now is a situation where this information cannot be properly obtained, but also, people who need the information to handle claims and so forth, cannot get information. So basically what I have done is, I moved that Senate Bill 28 ought to pass. Senate Bill 28 is exactly the same wording that I filed last session. The Senate passed it, but it was amended in the House. As this statute is currently written, certain parties that are entitled to receive the information are being denied access. Senate Bill 28 will prevent the disclosure of any information to any unauthorized individuals concerning workers' compensation cases and correct the current statute. We ask that you ought to pass. Thank you very much.

Adopted.

Ordered to third reading.

SB 23, relative to membership on the public water access advisory board. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 23 ought to pass. Senate Bill 23 allows the New Hampshire Lakes Association to nominate the member of the Public Water Access Advisory Board who will represent lakes associations. I have been dealing with the Lakes Association for ten years and have found them to be a very responsible and well-informed group. The New Hampshire Lakes Association represents over sixty individual lake associations across the state. A nomination from the New Hampshire Lakes Association will ensure that the member is someone who is knowledgeable about the lakes community and has access to the resources of the Lakes Association. The chairman of the Public Water Access Advisory Board has no objection. The Environment and Wildlife Committee asks your support for the motion of ought to pass on Senate Bill 23. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 39, relative to disinterment of dead bodies. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move Senate Bill 39 ought to pass. As you are keenly aware, Mr. President, when the Board of Registration of Funeral Directors and Embalmers issues a permit for disinterment, there is no requirement that any family member be notified that such a permit was requested or granted. This bill simply requires that when such a permit is requested, that the Board notify living parents, spouse or children of the request. The Public and Municipal Affairs Committee supports this policy overwhelmingly and asks your support. Thank you very much.

SENATOR BOYCE: Senator Martel, I'm just curious. You mentioned you know, surviving parents, living parents and so forth. I'm just worried about the language here that says that they shall be given written notice. If somebody has no living relatives... This says that they shall be notified, but how do you notify somebody that doesn't exist or how do you notify somebody who you have no trace on? You don't know who they are, you don't know where they are. It is troubling to me that this may be a little too rigid.

SENATOR MARTEL: The issue is that it has been discussed in committee is that in that case, the way that things are done now in the cemeteries is that the cemetery and the state has the authority to bury the people or to disinterment without permission of anyone, especially if there is no family members. So it is already considered in the laws. This is only a case of family, for instance, if there is a trial, and someone wants to disinter someone, in case they want to do an autopsy and so on. The family members should know what is going on. That is what this is for. It is focused on.

SENATOR BOYCE: Okay.

Adopted.

Ordered to third reading.

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. Before I make my motion, I would like to thank Senator Roberge and Senator Barnes, our biggest Red Sox fan in New Hampshire, for allowing me to take out this bill, along with the committee members. For me, personally, my father was four years old when the Red Sox, prior to last year, won the World Series the last time in 1918. My son last year was four years old. Of course, my father passed away in 1998 and he was a big Red Sox fan. Much like many of us here, there is many of us who thought we would never see a world championship for the Boston Red Sox, and I included. To be a Red Sox fan, you have to understand the history of the Red Sox. You have to understand that that, yes, Babe Ruth was sold and the curse had been developed somehow. My father actually remembers seeing Babe Ruth play, but he was in a Yankees uniform. In 1946, the Red Sox went to the World Series with Ted Williams, who did not have a good series, as he would admit. They basically lost to the St. Louis Cardinals. But when you got into the '70s, and you saw the homerun by Carlton Fisk in the 1975 World Series in that sixth game, those were my formidable

years. I became a rabid Red Sox fan as many of us did. He is the only New Hampshire player to ever be elected to the Hall of Fame. At the same time, I also worked at a camp, a New York camp. During those years, my best friend was a Yankees fan. You can imagine during the '70s, and in '78 when we lost in that playoff game to Bucky Dent and how I couldn't face my friend or my camp friends. It was very difficult. So we have really, as Red Sox fans, we have gone through a lot over the years. It was the pinnacle of those sad years happened in 1986 when we lost the World Series to the New York Mets and the ball went under Bill Buckner's leg and we know the rest of the story. I would like to, at this point, Mr. President, for all the Red Sox fans of New Hampshire and throughout New England, move that Senate Joint Resolution 1 ought to pass. It is a great joy and honor that I speak today about Senate Joint Resolution 1, because it means a life-long dream for me and Red Sox fans across the state have come true. The Red Sox, after 86 years of futility, have finally won the World Series and this resolution will enable the Granite State to officially join in on the celebration. It will also reaffirm to the Red Sox organization just how much a part of Red Sox Nation New Hampshire is. The Public and Municipal Affairs Committee supported this overwhelmingly, and unanimously, and asks for your support for the motion of ought to pass. Thank you, Mr. President.

SENATOR EATON (In the Chair): Thank you, Senator Kenney. It was very nice of Senator Barnes to let you bring that out. But, where he was at the first one, he'd let you have this one.

Adopted.

Ordered to third reading.

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21). Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-0. Senator Flanders for the committee.

Senator Flanders moved to recommit.

Adopted.

SCR 2 is recommitted to the Committee on Transportation and Interstate Cooperation.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 23, relative to membership on the public water access advisory board.

SB 28, relative to confidentiality and workers' compensation.

SB 39, relative to disinterment of dead bodies.

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month.

ANNOUNCEMENTS RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation and receiving messages.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered 135, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system. (Capital Budget)

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate Bills numbered from 33 to 210, shall be by this resolution read a first and second time by the therein listed titles and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

05-1032

SB 33-FN, requiring the department of health and human services to seek national accreditation. (Martel, Dist 18: Executive Departments and Administration)

05-1034

SB 35-FN, relative to the transfer of certain real property of the youth development center in Manchester for a charter school for children with autism. (Martel, Dist 18: Capital Budget)

05-0933

SB 49-FN, including multiple sclerosis in the catastrophic illness program. (Sen. Roberge, Dist 9; Sen. Martel, Dist 18: Banks and Insurance)

05-0787

SB 58-FN, relative to the workers' compensation special fund for second injuries. (Flanders, Dist 7; Infantine, Hills 13: Banks and Insurance)

05-0995

SB 62-FN, allowing court fees to be paid by credit card. (Foster, Dist 13; Dokmo, Hills 6: Ways and Means)

05-1008

SB 63-FN-A, establishing a court mediation fund to pay the costs of a mediation program in the district courts. (Foster, Dist 13; Dokmo, Hills 6: Ways and Means)

05-0324

SB 89-FN, relative to financing federally aided highway projects. (Sen. Morse, Dist 22; Sen. Clegg, Dist 14; Sen. Johnson, Dist 2; Sen. Letourneau, Dist 19; Sen. Gatsas, Dist 16; Rep. Rausch, Rock 5; Rep. Graham, Hills 18: Transportation and Interstate Cooperation)

05-0414

SB 92-FN, relative to registering to vote. (Roberge, Dist 9: Internal Affairs)

05-0543

SB 93-FN, transferring the electricians board to the department of safety. (Clegg, Dist 14; Letourneau, Dist 19; O'Neil, Rock 15: Executive Departments and Administration)

05-0578

SB 94-FN-A-LOCAL, prohibiting the taxation of internet access and internet activities under the communications services tax and repealing the local property tax exemption for wooden poles and conduits. (Green, Dist 6: Energy and Economic Development)

05-0588

SB 95-L, relative to noise from motor vehicles. (Sen. D'Allesandro, Dist 20; Sen. Martel, Dist 18; Rep. Hunter, Hills 7; Rep. Craig, Hills 9: Transportation and Interstate Cooperation)

05-0691

SB 97-FN, abolishing county departments of corrections and authorizing the department of corrections to contract with the counties to utilize former county correctional facilities as state facilities. (Burling, Dist 5; Fuller Clark, Dist 24: Executive Departments and Administration)

05-0927

SB 101-FN, relative to residential placements for certain disabled individuals between the ages of 18 and 21. (Estabrook, Dist 21: Health and Human Services)

05-0931

SB 102-FN, relative to the unlawful possession and consumption of alcoholic beverages by persons under 21 years of age. (Flanders, Dist 7; Knowles, Straf 6: Judiciary)

05-0940

SB 104-FN, relative to the tax exemption for water and air pollution control facilities. (Sen. Green, Dist 6; Sen. Gallus, Dist 1; Rep. Twombly, Straf 1; Rep. McLeod, Graf 2: Ways and Means)

05-0944

SB 106-FN, making unauthorized recording in a motion picture theater a crime. (Johnson, Dist 2: Judiciary)

05-0950

SB 107-FN, relative to the sale of tobacco products. (Johnson, Dist 2: Ways and Means)

05-0953

SB 109-FN, relative to catastrophic special education funding. (Sen. Estabrook, Dist 21; Sen. Green, Dist 6; Sen. Foster, Dist 13; Rep. W. P. Campbell, Straf 3; Rep. M. Smith, Straf 7; Rep. Rous, Straf 7: Finance)

05-0957

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs. (Larsen, Dist 15; Burling, Dist 5; D'Allesandro, Dist 20; Gatsas, Dist 16; Martel, Dist 18; Hassan, Dist 23; Estabrook, Dist 21; Gottesman, Dist 12; Foster, Dist 13; DeJoie, Merr 11: Health and Human Services)

05-0977

SB 114-FN, relative to licensing and certification responsibilities under the lead paint poisoning prevention and control program. (Clegg, Dist 14: Environment and Wildlife)

05-0978

SB 115-FN, relative to the transfer of responsibility for asbestos-related issues from the department of health and human services to the department of environmental services. (Sen. Clegg, Dist 14; Sen. Larsen, Dist 15: Environment and Wildlife)

05-0303

SB 118-FN, repealing certain provisions of law regarding small group health insurance. (Hassan, Dist 23; Gallus, Dist 1; Burling, Dist 5; Fuller Clark, Dist 24; Estabrook, Dist 21; Marshall Quandt, Rock 13; Norelli, Rock 16; C. Hamm, Merr 4: Banks and Insurance)

05-0999

SB 127-FN, relative to the regional community-technical college system's acquisition of the building currently leased from the Pease development authority. (Odell, Dist 8; Johnson, Dist 2; Clegg, Dist 14; D'Allesandro, Dist 20; Fuller Clark, Dist 24; O'Neil, Rock 15; S. Scamman, Rock 13; Thomas, Belk 5; S. L'Heureux, Merr 9; Norelli, Rock 16: Capital Budget)

05-1003

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act. (Johnson, Dist 2: Environment and Wildlife)

05-1004

SB 129-FN-A, relative to establishing a fee on the importation of motor fuels to fund air quality mitigation and establishing a dedicated fund. (Johnson, Dist 2: Transportation and Interstate Cooperation)

05-1010

SB 130-FN, relative to the "Nursing Home Residents Bill of Rights." (Sen. Larsen, Dist 15; Rep. French, Merr 5: Public and Municipal Affairs)

05-1017

SB 131-FN, establishing a school choice certificate program. (Johnson, Dist 2; Hunt, Ches 7; Alger, Graf 6; Slocum, Hills 6: Education)

05-1031

SB 135-FN, relative to retirement system service and benefits for county corrections employees. (Martel, Dist 18; Johnson, Dist 2: Banks and Insurance)

05-0244

SB 138-L, relative to motor vehicle liability for municipal workers. (Sen. Clegg, Dist 14; Sen. Flanders, Dist 7; Sen. D'Allesandro, Dist 20; Sen. Odell, Dist 8; Rep. Marshall Quandt, Rock 13; Rep. Carson, Rock 3; Rep. Introne, Rock 3: Transportation and Interstate Cooperation)

05-0558

SB 144-FN, relative to certified forensic counselors. (D'Allesandro, Dist 20; Craig, Hills 9: Executive Departments and Administration)

05-0573

SB 145-FN, establishing a medical/vision advisory board. (Letourneau, Dist 19; Morse, Dist 22; Martel, Dist 18; Packard, Rock 3; R. L'Heureux, Hills 19; Dowd, Rock 5; Waterhouse, Rock 4: (Transportation and Interstate Cooperation)

05-0601

SB 146-FN-A-LOCAL, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices. (Foster, Dist 13; Gottesman, Dist 12; Gallus, Dist 1; Odell, Dist 8; Stone, Rock 1; R. Wheeler, Hills 7: Executive Departments and Administration)

05-0605

SB 147-FN-LOCAL, relative to eligibility for local assistance and Temporary Assistance for Needy Families. (Gallus, Dist 1; Johnson, Dist 2; Odell, Dist 8; Clegg, Dist 14; Morneau, Coos 4; Mears, Coos 4; Theberge, Coos 4; Lary, Coos 3; Buzzell, Coos 4: Health and Human Services)

05-0697

SB 148, relative to motorcycle inspections. (Sen. Letourneau, Dist 19; Sen. Clegg, Dist 14; Sen. Morse, Dist 22; Rep. Packard, Rock 3; Rep. Nedeau, Belk 3; Rep. Ingbretonson, Graf 5; Rep. Dowd, Rock 5: Transportation and Interstate Cooperation)

05-0788

SB 150-FN, relative to application fees for certain bank incorporations. (Flanders, Dist 7: Banks and Insurance)

05-0871

SB 151-FN, relative to issuance of dealer plates to bonded motor vehicle dealers. (Clegg, Dist 14: Transportation and Interstate Cooperation)

05-0900

SB 152-FN, relative to audits by the department of revenue administration of enhanced 911 charges. (Sen. Clegg, Dist 14: Executive Departments and Administration)

05-0901

SB 153-FN, relative to the administration of certain programs by the department of environmental services. (Clegg, Dist 14: Executive Departments and Administration)

05-0902

SB 154-FN, relative to costs of criminal and motor vehicle records checks required for employment. (Clegg, Dist 14; Letourneau, Dist 19; Tholl, Coos 2: Executive Departments and Administration)

05-0909

SB 156-FN, relative to criminal trespass. (Johnson, Dist 2; Alger, Graf 6: Judiciary)

05-0912

SB 157-FN, relative to all terrain vehicles used for agricultural purposes. (Flanders, Dist 7; Johnson, Dist 2; B. Williams, Graf 8; Owen, Merr 4; Alger, Graf 6: Transportation and Interstate Cooperation)

05-0924

SB 158, relative to the disclosure of department of revenue administration records for purposes of assisting the state in the recovery of medical assistance. (Clegg, Dist 14; Odell, Dist 8; Boyce, Dist 4; Roberge, Dist 9; Wendelboe, Belk 1; Rogers Johnson, Rock 13; Kurk, Hills 7: Judiciary)

05-0928

SB 159, relative to verbal identification by public officials and employees. (Estabrook, Dist 21; Knowles, Straf 6: Judiciary)

05-0929

SB 160, providing that the state board of education shall appoint the commissioner, deputy commissioner, and division directors of the department of education. (Estabrook, Dist 21: Executive Departments and Administration)

05-0942

SB 161, relative to certain licenses issued by the liquor commission. (D'Allesandro, Dist 20; Gallus, Dist 1: Executive Departments and Administration)

05-0969

SB 162-FN-A, increasing the appropriation to the firemen's relief fund. (Gallus, Dist 1; Odell, Dist 8; Green, Dist 6; Kenney, Dist 3; Boyce, Dist 4; D'Allesandro, Dist 20; Currier, Merr 5; Russell, Belk 6; Tholl, Coos 2; Theberge, Coos 4; H. Richardson, Coos 2: Finance)

05-0974

SB 163-FN, establishing the New Hampshire pharmaceutical assistance program. (Clegg, Dist 14: Health and Human Services)

05-0975

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds. (Clegg, Dist 14; Morse, Dist 22; Larsen, Dist 15; Foster, Dist 13; Rausch, Rock 5; Graham, Hills 18; Cloutier, Sull 4: Transportation and Interstate Cooperation)

05-0980

SB 165-FN, relative to the collection of tax debts from out-of-state debtors. (Sen. Clegg, Dist 14; Sen. D'Allesandro, Dist 20: Executive Departments and Administration)

05-0981

SB 166-FN, relative to procedures for the forfeiture and sale of unstamped tobacco products. (Clegg, Dist 14; Odell, Dist 8; Dickinson, Carr 1: Ways and Means)

05-0988

SB 167, relative to extension of guardianship. (Foster, Dist 13: Judiciary)

05-0989

SB 168, relative to administration of estates. (Foster, Dist 13; Dokmo, Hills 6: Judiciary)

05-0994

SB 169, relative to access to confidential court records. (Foster, Dist 13: Judiciary)

05-1001

SB 170, revising the nurse practice act. (Kenney, Dist 3; Martel, Dist 18: Executive Departments and Administration)

05-1039

SB 171, establishing a committee to study HIV/AIDS service delivery. (Estabrook, Dist 21; Odell, Dist 8; Fuller Clark, Dist 24; Gallus, Dist 1; Kenney, Dist 3; Schulze, Hills 26; Pilliod, Belk 5; Batula, Hills 19; MacKay, Merr 11; French, Merr 5: Health and Human Services)

05-1041

SB 172, establishing a committee to study a medical fee schedule for workers' compensation. (Johnson, Dist 2: Banks and Insurance)

05-1044

SB 173, relative to exceptions to licensure for electricians. (Flanders, Dist 7; Hebert, Hills 17; Infantine, Hills 13: Executive Departments and Administration)

05-1050

SB 174, relative to itemizing indirect collective bargaining costs on budget warrant articles. (Kenney, Dist 3: Internal Affairs)

05-0276

SB 175, requiring insurance coverage for certified midwives. (Kenney, Dist 3; Larsen, Dist 15; Dickinson, Carr 1; S. Scamman, Rock 13; Kennedy, Merr 4; Gile, Merr 10: Banks and Insurance)

05-0327

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item. (Morse, Dist 22; Winchell, Rock 6; Belanger, Rock 4; Major, Rock 8: Public and Municipal Affairs)

05-0587

SB 177-FN, prohibiting the sale of certain food and drinks in public school cafeterias. (Sen. Foster, Dist 13; Sen. Larsen, Dist 15; Rep. French, Merr 5; Rep. Rosenwald, Hills 22: Health and Human Services)

05-1040

SB 178, designating a certain highway the Gold Star Mothers highway. (Sen. Estabrook, Dist 21: Transportation and Interstate Cooperation)

05-0707

SB 179, requiring hunters to report the death or injury of domestic animals. (Roberge, Dist 9: Environment and Wildlife)

05-0755

SB 180-FN-A-LOCAL, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. (D'Allesandro, Dist 20; Gallus, Dist 1: Transportation and Interstate Cooperation)

05-0836

SB 181-FN-A, making an appropriation to the postsecondary education commission for the purpose of the New Hampshire incentive program. (Odell, Dist 8; D'Allesandro, Dist 20; Larsen, Dist 15; Johnson, Dist 2; Fuller Clark, Dist 24; Alger, Graf 6; Nordgren, Graf 9: Finance)

05-0908

SB 182-FN, relative to electronic issuance of warrants. (Clegg, Dist 14; D'Allesandro, Dist 20; Flanders, Dist 7; Bicknell, Rock 1: Judiciary)

05-0914

SB 183, authorizing licensed medical adult day program facilities to assist clients with medication. (Flanders, Dist 7; Bragdon, Dist 11; Morse, Dist 22; Carter, Hills 3; Irwin, Hills 3: Health and Human Services)

05-0916

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act. (D'Allesandro, Dist 20: Judiciary)

05-0959

SB 185, relative to the possibility of reverter. (Larsen, Dist 15; Kenney, Dist 3; Burling, Dist 5; Martel, Dist 18; Gallus, Dist 1; Emerton, Hills 7: Judiciary)

05-0986

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases. (Foster, Dist 13: Judiciary)

05-0997

SB 187, relative to allowing alternative certified hazardous waste coordinator programs. (Foster, Dist 13; Johnson, Dist 2; Roberge, Dist 9; Clegg, Dist 14; Gottesman, Dist 12; Stone, Rock 1; Michon, Hills 25; Hinkle, Hills 19: Environment and Wildlife)

05-1006

SB 188, relative to allowing the construction of seasonal dwellings on certain properties without street frontage. (Johnson, Dist 2: Public and Municipal Affairs)

05-1011

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua. (D'Allesandro, Dist 20; Martel, Dist 18: Ways and Means)

05-1012

SB 190-LOCAL, relative to workforce housing opportunities. (D'Allesandro, Dist 20; Foster, Dist 13; Larsen, Dist 15; Martel, Dist 18; Burling, Dist 5; Craig, Hills 9; S. Scamman, Rock 13; Barry, Hills 16: Executive Departments and Administration)

05-1013

SB 191-FN, allowing retirement system members to make additional contributions to their accounts. (Odell, Dist 8; D'Allesandro, Dist 20; Parkhurst, Ches 4: Banks and Insurance)

05-1014

SB 192, relative to service in a war or conflict qualifying for the veterans' tax credit. (Odell, Dist 8; Clegg, Dist 14; Kenney, Dist 3; Letourneau, Dist 19; Gale, Sull 3; Heon, Straf 2: Public and Municipal Affairs)

05-1026

SB 193, relative to Occupational Safety and Health Administration Certification requirements for state contracts. (Gallus, Dist 1; Larsen, Dist 15; Hassan, Dist 23; Barnes, Dist 17; D'Allesandro, Dist 20; H. Richardson, Coos 2; Theberge, Coos 4; Mears, Coos 4; Clemons, Hills 24; Michon, Hills 25: Internal Affairs)

05-1027

SB 194-FN-LOCAL, relative to the use of domestic steel. (Gallus, Dist 1; Barnes, Dist 17; D'Allesandro, Dist 20; C. Brown, Carr 1; Alger, Graf 6; Gionet, Graf 3; Mears, Coos 4: Transportation and Interstate Cooperation)

05-1047

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies. (Letourneau, Dist 19; Barnes, Dist 17; Kenney, Dist 3; Johnson, Dist 2; Dickinson, Carr 1; Dodge, Rock 9; Packard, Rock 3; P. Smith, Rock 3; Rausch, Rock 5: Transportation and Interstate Cooperation)

05-0490

SB 197-FN, relative to captive insurance companies and reciprocal insurers. (Flanders, Dist 7; Hunt, Ches 7: Banks and Insurance)

05-0917

SB 200-FN, establishing the uniform athlete agents act. (D'Allesandro, Dist 20; Gallus, Dist 1; Craig, Hills 9: Public and Municipal Affairs)

05-0920

SB 201, making technical corrections to certain environmental laws and the small business technical assistance program. (Sen. Gatsas, Dist 16; Sen. Green, Dist 6; Sen. Johnson, Dist 2; Sen. Larsen, Dist 15; Sen. Barnes, Dist 17; Sen. Hassan, Dist 23; Rep. Phinizy, Sull 5: Energy and Economic Development)

05-0922

SB 206-FN, relative to the state code of ethics and establishing an executive ethics commission. (Larsen, Dist 15; D'Allesandro, Dist 20; Hassan, Dist 23; Clegg, Dist 14; Fuller Clark, Dist 24; Estabrook, Dist 21; Jasper, Hills 27; Craig, Hills 9; S. Francoeur, Rock 15: Internal Affairs)

05-0956

SB 208-FN, relative to certification of driver education instructors and driver training requirements. (Larsen, Dist 15; Kenney, Dist 3; Burling, Dist 5; Fuller Clark, Dist 24; Millham, Belk 5; DeJoie, Merr 11; Zolla, Rock 5; R. Williams, Merr 11; Gile, Merr 10: Transportation and Interstate Cooperation)

05-0958

SB 209-FN, relative to licensing of money transmitters and check cashers. (Larsen, Dist 15; Gottesman, Dist 12; Foster, Dist 13; Fuller Clark, Dist 24; Odell, Dist 8; Flanders, Dist 7; Clegg, Dist 14: Banks and Insurance)

05-0967

SB 210-FN, relative to the nexus required for application of the business profits tax and business enterprise tax and relative to the obligation to collect and remit taxes in another state. (Boyce, Dist 4; Letourneau, Dist 19; Odell, Dist 8; Major, Rock 8; Hunt, Ches 7; Mirski, Graf 10; Giuda, Graf 5: Ways and Means)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

February 3, 2005

The Senate met at 10:00 a.m.

A quorum was present.

Senate Guest Chaplain, Rabbi Richard L. Klein, from the Temple Beth Jacob in Concord, New Hampshire led the Senate in prayer.

This Sabbath, as part of our annual cycle of reading the Torah (Five Books of Moses), Jews around the world will read from Exodus the following-up to the Giving of the Ten Commandments at Mount Sinai. Few passages are as familiar to us as those ten utterances intended to make it possible for the biblical Israelites to live together in community. The Book of Exodus goes on to list dozens of other regulations that we, today, would classify as criminal, civil and family law. Most of these provisions remain as the basic principles for our modern legal system. The message, it seems to me, is that the work you are doing in shaping New Hampshire statute is as holy an undertaking as those conversations between God and Moses described in the book of Exodus. May you be blessed with wisdom in your deliberations and may we all fully appreciate the sacrifices that you make to engage in this sacred task. Amen

Senator Boyce led the Pledge of Allegiance.

Senator Kenney is excused for the day.

INTRODUCTION OF GUESTS COMMITTEE REPORTS

SB 44, establishing a study committee on student credit card debt and regulation of credit card solicitation on college campuses. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Barnes for the committee.

Banks and Insurance

January 25, 2005

2005-0078s

06/10

Amendment to SB 44

Amend subparagraph I(a) of section 2 of the bill by replacing it with the following:

(a) One member of the senate, appointed by the president of the senate.

Amend paragraph II of section 3 of the bill by replacing it with the following:

II. The committee shall solicit input from representatives of the university system of New Hampshire; representatives of community-technical and private colleges within the state, including financial aid officers, students, and parents of students; the public higher education study committee; relevant industry trade groups including the New England Financial Services Association and the New Hampshire Bankers Association; and the New Hampshire Jumpstart Coalition.

Amend section 4 of the bill by replacing it with the following:

4 Chairperson. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 44 ought to pass with amendment. Credit card solicitation is an important issue on college campuses. Students need to be well educated on credit cards and how harmful they can be to their credit report. The amendment to Senate Bill 44 does two things. First, it changes the number of appointed Senators from three to one. Secondly, it adds relevant industry trade groups including the New England Financial Services Association and the New Hampshire Bankers Association to the list of groups the committee shall solicit input from. The Banks and Insurance Committee asks your support for the motion of ought to pass with amendment. It passed unanimously in committee. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 73, relative to market conduct record retention and production. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This is a very interesting bill. Over the years there has been a lot of problems between companies and the Insurance Department on audits. One of the problems was retention of records. Most insurance companies have records stashed everywhere and there has been no limit how long they had to keep them. This sets the record on retention. It also sets up that the Department is going to notify the companies when they are going to do their audit. It sets up what is going to be expected of the company and it will make it much easier for audits to be taking place, and everybody will have a better understanding of what takes place. This was a unanimous vote, that it ought to pass. Thank you.

SENATOR GATSAS: Thank you. Senator Flanders, on page four, line 35, it uses the word "producer".

SENATOR FLANDERS: Producer means agent.

SENATOR GATSAS: Okay, because I couldn't find a definition for producer anywhere.

SENATOR FLANDERS: It is a standard. It is an agent.

SENATOR GATSAS: Okay. Thank you.

Adopted.

Ordered to third reading.

SB 15-L, relative to the approval process for tuition contracts with schools. Education Committee. Inexpedient to legislate, Vote 5-0. Senator Gatsas for the committee.

SENATOR GATSAS: Thank you, Mr. President. I move Senate Bill 15 inexpedient to legislate. The committee and the sponsor recommend the action of ITL for this bill. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 51, relative to jurisdiction of the public utilities commission over rural electric cooperatives. Energy and Economic Development Committee. Inexpedient to legislate, Vote 4-1. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 51 inexpedient to legislate. Senate Bill 51 was proposed to authorize the Public Utilities Commission to resolve issues that may arise between rural electric co-ops and parties that want to use poles that the co-ops own. The committee believes that the PUC should not have additional responsibilities and that the legislature should not get involved in disputes between private companies. The Energy and Economic Development Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

SB 41, relative to penalties for certain OHRV violations. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move SB 41 ought to pass. Senate Bill 41 adds fines and training program requirements to certain violations of OHRV laws. As you know, snowmobiling is a popular winter activity in the north country and throughout our state. This bill will help emphasize safety by adding the activity of "skimming" to the list of violations that result in a \$200 fine. The activity of "skimming" is very dangerous to the operator and to the safety personnel who end up having to come to the rescue of someone who falls through. The bill also requires certain offenders to successfully complete a safety education class. We love outdoor recreation in New Hampshire, but we also know how important it is to encourage safety. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 45-L, establishing a tax stabilization fund for the Hanover school district. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

Senate Executive Departments and Administration

January 26, 2005

2005-0093s

04/10

Amendment to SB 45-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to the Hanover school district tax stabilization fund.

Amend the bill by replacing all after the enacting clause with the following:

1 Hanover School District; Tax Stabilization Fund. Notwithstanding any provision of law to the contrary, the tax stabilization fund established by the Hanover school district at its March 2004 annual school district meeting is hereby ratified and affirmed. Any appropriations to the tax stabilization fund voted by the Hanover school district prior to the effective date of this act are hereby ratified and affirmed. Further, the Hanover school district may make appropriations to, and withdrawals from, the tax stabilization fund as authorized by the legislative body of the school district.

2 Effective Date. This act shall take effect upon its passage.

2005-0093s**AMENDED ANALYSIS**

This bill ratifies and affirms the establishment of a tax stabilization fund by the Hanover school district at its March 2004 annual school district meeting.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This is an interesting piece of legislation. Hanover School District has determined that in the future they have a big expense and their tax rate is going to go up drastically. What they want to do is, they want to put money away to hedge off this increase. Towns do it all the time. They call it Capital Reserve Funds, those of us that have small towns. They are not able to do it. This is enabling legislation, which by number one, a vote of the school district will establish the fund. It will take a vote of the district to put the funds into it and it will take a vote of the district to take funds out of it. We all thought this was a good idea and it passed out of committee by 6-0. I would also like to inform you that this is Senator Burling's first piece of legislation in the Senate and it passed 6-0 and we warned him not to get used to it.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SENATOR BURLING: Mr. President, may I be recognized to say thank you for the birthday present? I understand it will not be repeated on a regular basis.

SB 53-FN, relative to increased funding for publication of certain materials by the department of environmental services and changing the title of chief operations officer to chief financial officer in the department of environmental services. Executive Departments and Administration Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This was a bill that was submitted by the Department of Environmental Services. At the present time, they have a person who is sitting there with the title of Chief Operations Officer whose duties are mainly financial. That person is a certified public accountant and they want to change that title to Financial Officer. There is no money involved in this. Secondly, the Department of Environmental Services makes a lot of printing. They make a lot of maps and this type of thing here, that they sell for very reasonable costs. But they make a lot of large maps and so forth. Presently, they have a resolving fund with the amount of \$20,000 that they can keep from the sales of this material. They are asking that we increase that to \$30,000 because of the cost of printing and the cost of ink is going up and they want to keep this money so that they can continue to do the printing of the maps. This was a unanimous vote of ought to pass from the ED&A. Thank you.

Adopted.

Ordered to third reading.

SB 54, clarifying the role of a guardian ad litem in guardianship proceedings. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary
January 26, 2005
2005-0085s
09/10

Amendment to SB 54

Amend the bill by replacing all after the enacting clause with the following:

1 Conduct of Hearing. Amend RSA 463:8 to read as follows:

463:8 Conduct of Hearing.

I. In any hearing under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material.

II. A minor 14 years of age or older shall attend the hearing unless attendance is excused by the court. All other minors may attend the hearing if authorized or ordered by the court.

III.(a) Except as set forth in subparagraph (b), the burden of proof shall be on the petitioner to establish by a preponderance of the evidence that a guardianship of the person is in the best interests of the minor.

(b) If a parent objects to the establishment of the guardianship of the person requested by a non-parent, the court shall set a date for the hearing specified in this section. The burden of proof shall be on the petitioner to establish by clear and convincing evidence that the best interests of the minor require substitution or supplementation of parental care and supervision to provide for the essential physical and safety needs of the minor or to prevent specific, significant psychological harm to the minor.

(c) The burden of proof shall be on the petitioner for the guardianship of the estate of a minor to establish by a preponderance of the evidence that the guardianship is necessary to provide for the proper management of the property and financial affairs of the minor.

IV. The consent of the minor shall not be necessary for the appointment of a guardian, but the court shall in all cases ascertain the minor's preference, and give to it such weight as under the circumstances may seem just.

V. When before or during the hearing on any proceeding in any court it appears to the court that the interest or rights of a minor are not fully represented or upon the request of any interested person, the court may appoint a competent and disinterested person to act as guardian ad litem for such minor to represent the minor's interest in the case. The guardian ad litem shall have none of the rights of the general guardian. The person appointed guardian ad litem shall make an oath to perform such duty faithfully and impartially.

VI. A guardian ad litem appointed in a child custody proceeding in the probate court or family division shall be subject to the same standards, requirements, and rules as apply to guardians ad litem appointed in divorce, nullity, or legal separation proceedings under RSA 458:17-a.

[W:] VII. The court may appoint a guardian of the person or of the estate or of both as requested if, upon hearing, it finds based on the applicable burden of proof:

(a) In the case of guardianship of the person, guardianship is in the best interests of the minor as provided in paragraph III and the person nominated is appropriate.

(b) In the case of guardianship of the estate, that the guardianship is necessary to provide for the proper management of the property and financial affairs of the minor and the person nominated is appropriate.

[VI.] **VIII.** If a parent objects to the appointment or continuation of a guardianship, the court shall issue written findings concerning the petitioner's compliance with the relevant burden of proof under paragraph V.

[VII.] **IX.** If a parent consents to the appointment of a guardianship, such consent shall be executed by an instrument in writing, signed by the parent, in the presence and with the approval of the court of the county in which the case is pending. The court may designate a person or another court to take the parent's consent on the court's behalf for good cause shown. The court, or its designee, shall also question the consenting parent regarding his or her understanding and knowledge of the nature and consequences if the petition is granted; and to insure that the parent understands he or she has the right to contest the petition. If the court, based on its own determination or its duly certified designee, finds:

(a) That consent is being given voluntarily and knowingly, the court may conduct a hearing pursuant to this section and thereon make all orders authorized by this chapter; or

(b) That consent is not being given voluntarily and knowingly for any reason such as because the parent lacked the mental capacity to give such consent. In this case, the court may:

(1) Hold a hearing pursuant to this section within 6 months, or earlier, if it is reasonably likely that the parent's mental capacity will be restored within a shorter time period, and during the interim make or renew whatever temporary orders under RSA 463:7 the court deems necessary; or

(2) If it is unlikely that capacity will be restored within 6 months, schedule and conduct a hearing pursuant to this section as if the parent were objecting under paragraph III and make or renew whatever temporary orders under RSA 463:7 the court deems necessary until the hearing is conducted.

[VIII.] **X.** If the parent does not appear at the hearing and the court has not received a properly and duly executed consent form, the court may conduct such hearing as necessary to make the determinations required by this section and thereon make all orders authorized by this chapter.

[IX.] **XI.** When the court grants guardianship as part of the permanency plan for a child in the department's custody pursuant to the Adoption and Safe Families Act of 1997, Public Law 105-89, the court shall so specify in its order.

2 Reference Change; Notice. Amend RSA 463:6, II(b) to read as follows:

(b) That either parent has a right to consent to the granting of the guardianship petition, and if such parent consents, he or she shall do so before the court or the court's designee as specified in RSA 463:8, [VII.] **IX.**

3 Appointment of Guardians Ad Litem. Amend RSA 464-A:41 to read as follows:

464-A:41 Appointment of Guardians Ad Litem.

[I.] When before or during the hearing on any proceeding in any court it appears to the court that the interest or rights of a ~~[minor or a]~~ legally incapacitated person **by age or other cause or circumstance** are not fully represented **or upon the request of any interested person**, the court may~~[-and upon the request of any interested person shall,]~~ appoint a competent and disinterested person to act as guardian ad litem for such

~~[minor or]~~ legally incapacitated person and to represent such person's interest in the case. The guardian ad litem shall have none of the rights of the general guardian. The person appointed guardian ad litem shall make oath to perform such duty faithfully and impartially. A bond may be required of the guardian ad litem at the discretion of the court.

~~[II. A guardian ad litem appointed in a child custody proceeding in the superior court shall be subject to the same standards, requirements, and rules as apply to guardians ad litem appointed in divorce, nullity, or legal separation proceedings under RSA 458:17-a. In a child custody proceeding in the superior court, the guardian ad litem for a child whose parents are indigent shall be compensated from the special guardian ad litem fund established under RSA 458:17-b.]~~

4 Effective Date. This act shall take 60 days after its passage.

2005-0085s

AMENDED ANALYSIS

This bill clarifies the role of a guardian ad litem in guardianship proceedings.

This bill was requested by the administrative judge of the probate courts.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 54 ought to pass with amendment. The bill was a request of the Probate Court judges to correct the confusion over what types of Guardian Ad Litem's can be sought for minors. The committee amendment corrects a drafting error and changes the standard of appointment of a Guardian Ad Litem in these situations from "shall" to "may" so that there is no mandate. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 59, relative to the general powers and duties of guardianship. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

Senate Judiciary

January 26, 2005

2005-0086s

01/09

Amendment to SB 59

Amend RSA 464-A:25, I(c) as inserted by section 1 of the bill by replacing it with the following:

(c) A guardian shall file an annual report with the probate court, unless the court finds that such report is not necessary.

SENATOR FOSTER: Thank you, Mr. President. I move Senate Bill 59 ought to pass with amendment. This is also a request of the probate courts. Senate Bill 59 amends the statutes to reflect current court practice for filing annual guardianship reports. This practice is currently working well. The committee amendment merely changed one word from

“appropriate” to “necessary” so the court may waive the annual report in certain circumstances. The Judiciary Committee recommends that this legislation be adopted and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

MOTION TO TABLE

Senator Larsen moved to have **SB 29**, relative to processing absentee ballots, laid on the table.

Adopted.

LAIID ON THE TABLE

SB 29, relative to processing absentee ballots.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 41, relative to penalties for certain OHRV violations.

SB 44, establishing a study committee on student credit card debt and regulation of credit card solicitation on college campuses.

SB 45-L, relative to the Hanover school district tax stabilization fund.

SB 53-FN, relative to increased funding for publication of certain materials by the department of environmental services and changing the title of chief operations officer to chief financial officer in the department of environmental services.

SB 54, clarifying the role of a guardian ad litem in guardianship proceedings.

SB 59, relative to the general powers and duties of guardianship.

SB 73, relative to market conduct record retention and production.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the purpose of introducing legislation, and receiving messages.

Adopted.

In recess to the Call of the Chair.

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from 5 to SJR 2, shall be by this resolution read a first and second time by the therein listed titles and referred to the therein designated committees.

Adopted.

First and Second Reading and Referral

05-0404

SB 5, establishing a commission to study the state park system. (Odell, Dist 8; Eaton, Dist 10; Larsen, Dist 15; Gallus, Dist 1; Craig, Hills 9; Spang, Straf 7; Brueggemann, Merr 12; Russell, Belk 6: Environment and Wildlife)

05-1049

SB 6-FN, relative to small group insurers. (Flanders, Dist 7; Letourneau, Dist 19; Kenney, Dist 3; Odell, Dist 8; Clegg, Dist 14; Martel, Dist 18; Bragdon, Dist 11; Johnson, Dist 2; Hunt, Ches 7: Banks and Insurance)

05-1009

SB 125-FN, relative to small group health insurance and relative to reinsurance. (Gatsas, Dist 16; Barnes, Dist 17; Gallus, Dist 1; Green, Dist 6; Roberge, Dist 9; Stone, Rock 1; R. Wheeler, Hills 7; Wendelboe, Belk 1: Banks and Insurance)

05-1005

SB 213, authorizing the department of environmental services to adopt rules from the California Air Resources Board. (Johnson, Dist 2: Transportation and Interstate Cooperation)

05-0954

SB 214, relative to screening panels for medical injury claims. (Gallus, Dist 1; Odell, Dist 8; Morse, Dist 22; Roberge, Dist 9; Burling, Dist 5; Johnson, Dist 2; Kenney, Dist 3; Boyce, Dist 4; Green, Dist 6; Flanders, Dist 7; Barnes, Dist 17; Martel, Dist 18; Estabrook, Dist 21; Bragdon, Dist 11; Gatsas, Dist 16; S. Francoeur, Rock 15; Dickinson, Carr 1; French, Merr 5; Pilliod, Belk 5; Hunt, Ches 7: Judiciary)

05-0921

SB 215-FN, banning the incineration of construction and demolition debris. (Larsen, Dist 15; Burling, Dist 5; Hassan, Dist 23; Currier, Merr 5; Kennedy, Merr 4; C. Hamm, Merr 4: Energy and Economic Development)

05-0048

SB 216, establishing a commission to study area agencies and relative to rules regarding area agencies. (Burling, Dist 5; Almy, Graf 11; Bleyler, Graf 9; Naro, Graf 7; Harding, Graf 11: Health and Human Services)

05-0962

SB 217-FN, relative to the use of lottery revenue as purses for horse and dog racing. (Roberge, Dist 9; Barry, Hills 16; Gibson, Hills 19: Ways and Means)

05-0518

SB 218, eliminating straight ticket voting. (Burling, Dist 5; Barnes, Dist 17; Fuller Clark, Dist 24; Hassan, Dist 23; Norelli, Rock 16: Internal Affairs)

05-1061

SB 219-FN, relative to examinations under workers' compensation. (Flanders, Dist 7: Banks and Insurance)

05-0941

SB 220-FN-LOCAL, relative to the payment of medical benefits costs for certain group II permanent firemen members injured in the performance of duty, and for disabled group II members of the retirement system. (D'Allesandro, Dist 20; Gallus, Dist 1: Banks and Insurance)

05-1060

SB 221, relative to identification requirements for obtaining a driver's license. (Burling, Dist 5; Green, Dist 6; Larsen, Dist 15; Hager, Merr 12; Dickinson, Carr 1; Nordgren, Graf 9: Transportation and Interstate Co-operation)

05-1062

SB 222-FN, relative to cumulative trauma under workers' compensation. (Flanders, Dist 7: Banks and Insurance)

05-0968

SJR 2, urging Congress to reject the Streamlined Sales Tax Project. (Boyce, Dist 4; Clegg, Dist 14; Letourneau, Dist 19; Kurk, Hills 7; Weyler, Rock 8; Major, Rock 8; Hunt, Ches 7: Energy and Economic Development)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

February 10, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! I'm glad to see you all here safe and sound. Those who drive the New Hampshire highways on February days like this one need a combination of skill, quick reflexes and foresight. Such drivers also need wisdom because there are some, in their shiny black SUVs (present company excluded), who are tempted to drive too fast and push too hard. They can endanger themselves and they might encounter some that wish they weren't so far out front. But equally hazardous are those who are overly timid and drive too slowly. They also risk themselves and others by lagging ominously behind. Driving in New Hampshire today is not too different from being a member of the Senate in New Hampshire today. Skill to manage this machine well; quick reflexes to respond to constant change; and foresight to anticipate that which you cannot yet see are all things you obviously need to cultivate. And don't drive too fast, you may run us off the road. But, for goodness sake, don't drive too slowly either, because you may find yourself overtaken from behind by some very big surprises. So, we had better pray.

Keep this Senate and those who work with them under Your watchful protection, O God. We pray this morning for freedom from legislative hydroplaning, partisan loss of control and any procedural collision. Make them skillful, quick, perceptive and wise, for then the highways of our welfare will be safe places to be. Amen

Senator Burling led the Pledge of Allegiance.

Senator Johnson is excused for the day.

INTRODUCTION OF GUESTS

SENATOR D'ALLESANDRO (RULE #44): Thank you, Mr. President. There are many times when, as a legislature, we do some outstanding things. But very few times do people get rewarded for that. So, let me just read something that came from a person to me that I think involves everybody in this room and certainly everybody in the House. "Words can't express how much your thoughtfulness is appreciated. Dear Senator D'Allesandro. Thank you very much for your help and support in the search of our daughter Darlene's birth mother. The information you provided to my husband, led us to Susan Chancellor at the Division of Child and Family Services. She was very diligent in the search that involved our daughter and located the birth mother in Florida. The medical records are on the way. At this time, we know that the birth mother had cervical cancer at age 27, as our daughter has. Darlene has a greater sense of peace knowing she can correspond with her birth mother and have answers to some of her questions. You have opened the doors to our adopted children and we'll always be grateful." I think that's why we all come to the legislature. To do things for people that make a lot of sense. In the first month of our open birth records, 321 adoptees have requested their birth certificates. Three hundred and twenty-one people now know who they are. That's a credit to the Senators, the members of the House and everyone who participated in this process. So anytime one feels that public service is not worthy and is not really where we all should aspire to, it's letters like this that make us all feel very comfortable with what we do, how we do it and the reasons why we're here. Thank you, Mr. President.

COMMITTEE REPORTS

SB 74, making certain technical changes in the insurance laws. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

Banks and Insurance

February 5, 2005

2005-0176s

01/09

Amendment to SB 74

Amend RSA 402:81, I(a)(1) as inserted by section 3 of the bill by replacing it with the following:

(1) *The original policy to be cancelled; or*

Amend the introductory paragraph of RSA 402-C:36 as inserted by section 4 of the bill by replacing it with the following:

The amount recoverable by the liquidator from a reinsurer shall not be reduced as a result of delinquency proceedings ~~[unless]~~ **regardless of whether** the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable by the assuming insurer on the basis of the claims allowed against

the ceding insurer in the insolvency proceedings, under contract or contracts reinsured without diminution because of the insolvency of the ceding insurer. ***Such payments shall be made*** directly to the ceding insurer or to its domiciliary liquidator or receiver except:

Amend the introductory paragraph of RSA 402-C:44 as inserted by section 5 of the bill by replacing it with the following:

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first \$50 of the amount allowed on each claim in the classes under paragraphs II, V, and VI except claims of the guaranty associations as defined in RSA 404-B, ***404-H***, 404-D, and 408-B shall be deducted from the claim. Claims may not be cumulated by assignment to avoid application of the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class.

Amend RSA 415-A:4-a, I(b)(1) as inserted by section 9 of the bill by replacing it with the following:

(1) Developed with input from appropriate [~~actively practicing~~] practitioners [~~in the licensed entity's service area~~] ***with professional knowledge or clinical expertise in the area being reviewed***;

Amend RSA 420-J:5, I(b) as inserted by section 11 of the bill by replacing it with the following:

(b) [~~The~~] ***For medical necessity appeals at least one person reviewing the [grievance on a first or second level appeal have appropriate medical and professional expertise and credentialing to competently render a determination on] appeal is a practitioner in the same or similar specialty who typically treats the medical condition, performs the procedure or provides the treatment at issue in the appeal. A practitioner is considered of the same specialty if he or she has similar credentials and licensure as those who typically treat the condition or health problem in question in the appeal. A practitioner is considered of a similar specialty if he or she has experience treating the same problems as those in question in the appeal, in addition to expertise treating similar complications of those problems***;

Amend RSA 420-J:5, II(a) as inserted by section 12 of the bill by replacing it with the following:

(a) The review shall be conducted by or in consultation with a health care professional [~~who has appropriate training and experience in the field of medicine~~] ***in the same or similar specialty who typically treats the medical condition, performs the procedure or provides the treatment at issue in the appeal. A practitioner is considered of the same specialty if he or she has similar credentials and licensure as those who typically treat the condition or health problem in question in the appeal. A practitioner is considered of a similar specialty if he or she has experience treating the same problems as those in question in the appeal, in addition to expertise treating similar complications of those problems***;

SENATOR FOSTER: Thank you, Mr. President. I move Senate Bill 74 ought to pass with amendment. The majority of the bill makes minor technical corrections to the insurance statutes, which include correcting a cited reference changing the minimum electronic transfer amount from \$100,000 to \$40,000, and clarifying that if a payment is not received

within the 31-day grace period, the producer is liable for any losses that occur after that time if they elect to continue coverage. It will also allow the commissioner to obtain information he feels is important for maintaining a competitive market. The amendment to Senate Bill 74 clarifies some issues that the committee had with a few sections. The committee also heard lots of testimony both in favor and against language which was contained in section 5 of the bill. The committee, without coming to a substantive determination on that language, felt that because the matter was before the courts, it was best not to pass a measure that impacted the litigation in any way whatsoever. The amendment removes section 5. The other changes that appear in the amendment deal with issues the committee had regarding the clarifications of definitions in the original bill. The Banks and Insurance Committee asks your support of ought to pass with amendment and also following this will be a floor amendment by Senator Gottesman, which the committee also supports. Thank you very much.

Amendment adopted.

Senator Gottesman offered a floor amendment.

Sen. Gottesman, Dist. 12

February 7, 2005

2005-0190s

01/09

Floor Amendment to SB 74

Amend RSA 402:81, I(c)-(f) as inserted by section 3 of the bill by replacing them with the following:

(c) No refund shall be required if the return premium is \$1 or less.

(d) For auditable policies, gross unearned premium shall be returned within 30 days from the date of the completed audit.

(e) This paragraph shall not apply to retrospectively rated policies.

SENATOR GOTTESMAN: Thank you, Mr. President. Mr. President, when an insurance policy is terminated, the money should go back to the rightful owner if there is a credit. This amendment will change section 3, paragraph I, sections c and d. Presently, the laws of New Hampshire say that, if a refund is due to an individual of a dollar or less, that the insurance company does not have to send it back. I think the logic of that is the cost of the stamp and the envelope pretty much amount to that. Under the circumstances of this bill, if it is \$15 or less, the insurance company is now supposed to send a letter to the insured, tell them that they can have the money if they want it, and then the insured has to write back to the insurance company and tell them that they want the money, and then the insurance company will send the money to the individual. Now, no matter if the refund is for a business or an individual, it is their money and the insurance company should not be allowed to keep the money. As the bill is written now in paragraph d, the individual would have to request a refund if it was \$15 or less. This amendment would stop the unnecessary bureaucratic process for these individuals to get their money back. This is to better protect the consumers and to give them what truly belongs to them. Fellow colleagues, please join me and support this floor amendment to better protect the consumers of New Hampshire. And, Mr. President, the number of the amendment is 2005-0190s.

SENATOR BOYCE: Senator Gottesman, this is actually sort of a would you believe. Several years ago I was in...I worked for a company that had

an employee payroll deduction for buying stock in the company. When I left the company, I told the broker I wanted to sell that off and transfer it to an IRA. They did all that and somehow a dividend check or a dividend got paid after the date that I had done that. The dividend was 14 cents. For the last, well it is at least 12 or 14 years, every three months I get a statement from that company, from the stockbroker that I have a 14 cent balance. Now they haven't yet figured out that if they sent me a postage paid envelope to write back or someplace other than to make a long distance phone call or something to sit on the line for a while...if they gave me some easy way to let them have that 14 cents, they could stop sending me the letter. But, every three months I get a letter saying "you have 14 cents with our brokerage" and they keep reporting it. I can see the effect of what you are actually looking for here. Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator Gottesman, in "e" it says or "This paragraph shall not apply to retrospectively rated policies." Can you just...is that including the refunds also or..? It is in the bill originally and it is also in your amendment. I am not...I am a little confused about what a retrospectively rated policy is.

SENATOR GOTTESMAN: I can't say that I have an honest answer for you, Senator Gatsas.

SENATOR GATSAS: Okay.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system. Capital Budget Committee. Ought to pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move HB 135 ought to pass. This legislation extends an appropriation to the Corrections Department for an information technology system which will allow them to receive an \$800,000 match from the Attorney General's Office. Remember, we have been remiss in putting this system together for a number of years and these processes have taken place in a manual fashion. This expedites a situation where this can be done electronically, and people who should be receiving the money can receive it in a timely fashion. The system will be modeled after the Corrections Department in Maine. This system will meet the requirements of the state without the long development period. A study committee is also proposed to study a facility fee for laboratory services to pay for maintainance and debt service on the renovations and expansion of the state labs. This study will also look at a way to standardize fees and create an equipment replacement fund. This bill is being fast tracked to provide the Corrections Department the necessary extension in order to receive the matching grant from the Attorney General's Office. The Capital Budget Committee asks your support for the motion of ought to pass.

Adopted.

Ordered to third reading.

SB 203, relative to leases and contracts for buildings or lands owned by the fish and game department. Capital Budget Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.

**Capital Budget
February 2, 2005
2005-0150s
10/01**

Amendment to SB 203

Amend RSA 212:10-b, II as inserted by section 1 of the bill by replacing it with the following:

II. The executive director of the fish and game department may assign department housing without charge to a classified employee, including only, any or all of the following utilities: heat, fuel, gas, electricity, and water; provided, that said housing is being furnished for the operational convenience of the department, the housing is on state property administered and managed by the department, and the classified employee is required to accept such lodging as a condition of employment.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Fish and Game Department; Fee Schedule. The fish and game department shall develop a fee schedule for short-term use of less than 30 days of department buildings and lands authorized to be used pursuant to the authority in RSA 212:10-b, I as inserted by section 1 of this act. Prior to implementation, the department shall submit the fee schedule to the fiscal committee of the general court for its approval.

2005-0150s

AMENDED ANALYSIS

This bill allows the executive director of fish and game to lease or contract for short-term uses of department buildings or lands and requires the department to develop a fee schedule. This bill also allows the fish and game department to provide lodging to department employees without charge.

SENATOR BOYCE: Thank you, Mr. President. I move Senate Bill 203 ought to pass with amendment. This legislation gives the Fish and Game Department the authority to allow short-term rental use of buildings and land that is owned by the Department. For example, a bird dog hunting club put in a request to use Berry Conservation Camp for a weekend event. The club was hoping to host the event from the camp with the hunting events to take place in the White Mountain National Forest. Fish and Game was unable to grant their request due to the lack of legislative authority. This legislation would provide that authority. It also requires the Department to create a fee schedule for such use to be approved by the Fiscal Committee. The second portion of the bill clarifies statute in response to an LBA audit and it allows employees, such as fish hatchery employees, to live on the grounds without charge as a condition of their employment. This allows them to be there in case the fish hatchery has a power outage or a dam overflows or something, and they can actually take care of it or, if there are poachers, they can go chase them off. It is to the state's and the Department's benefit that these people live on the grounds. The LBA audit found that there was no authority to allow them to do that without being assessed as tenants. The Capital Budget Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 12, relative to a certain contract to create a high school for the town of Bedford. Education Committee. Ought to pass with amendment, Vote 3-1. Senator Bragdon for the committee.

Senate Education

February 8, 2005

2005-0224s

08/09

Amendment to SB 12

Amend the title of the bill by replacing it with the following:

AN ACT relative to contracts with non-profit public academies.

Amend the bill by replacing section 1 with the following:

1 Contracts With Schools. RSA 194:22 is repealed and reenacted to read as follows:

194:22 Contracts With Schools. A school district may choose one of the following methods to make a contract with:

I. An academy, high school or other literary institution located in this or, when distance or transportation facilities make it necessary, in another state, and raise and appropriate money to carry the contract into effect. If the contract is approved by the state board the school with which it is made shall be deemed a high school maintained by the district; or

II. A non-profit public academy to provide public education in grades 9 through 12 for the residents of the district, provided the contract is approved by the legislative body of the district, and complies with the provisions of this chapter.

2005-0224s

AMENDED ANALYSIS

This bill establishes a new procedure for school districts to make a contract with non-profit academies for the provision of secondary education.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 12 ought to pass with amendment. Senate Bill 12 is enabling legislation allowing a school district, if approved by the voters, to contract with a nonprofit public academy to educate its secondary students. The amended language was developed by the Department of Education, senators from the committee, and the sponsor. The Education Committee asks your support for the motion of ought to pass with amendment. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I wanted to rise to let my colleagues know that I was the one vote in opposition to passage of this bill. The bill was originally drafted very narrowly so that it applied only to the situation in the Bedford School District. What we discovered as we discussed it, specifically and generally, is that one of the situations that could occur under this bill is that a district could contract on a long-term basis, create a contract as long as twenty years, similar to the life of a bond, and that contract could include significant capital costs. Those capital costs would...the district would be bound to those even if they withdrew from the contract. Now that could all be accomplished under this bill by a vote of a simple majority. It seemed to me that it was bad policy to make it easier for a district to establish that

type of high school program than it would be for them to establish their own high school, because that would require a sixty percent vote. So I thought that was an issue of some significance in terms of policy. The next thing that happened that made me decide to vote against this is that when the committee amendment came back in executive session and we were told that the amendment was now drafted in broader terms, not specific to Bedford, and that therefore, the department was comfortable with it. There was no one there from the department who could explain whether the ramifications that were originally of concern would continue to be possible. So based on all those uncertainties, I think it is bad policy for us to move this bill forward. I would ask my colleagues to vote against the ought to pass.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the bill. I was a school board member in the city of Manchester for ten years. We never negotiated a contract with Bedford that was over five years in duration. That was negotiated by the Bedford Board and the Manchester Board. It was a local situation, handled at the local level. The Department of Education cannot become involved in these negotiations; it can only approve these negotiations. It doesn't make a great deal of sense to me. This bill shortens due process, due process, which is ordinarily put in place for not for profit, academies and schools. And, by the way, we have two not for profit academies existing in the state of New Hampshire. We have the Coe-Brown Academy and we have Pinkerton Academy. Long standing. Very long standing academic institutions. Many, many, many years. The twenty-year contract is something we ought to think about. How do you get out of a twenty-year contract? What are the provisions? What happens at that point in time? For example, where do the kids go? You have a private situation. What if all of a sudden they decide to close? What happens? I think we have to be very vigilant and very attend to our duties. The ambiguity of this bill. What about the process? Is it clear? Is it succinct? Does it include all of the people? I think, for those reasons, we should be very careful before we do something like this. And, is this specifically for one town in the state of New Hampshire and what about other towns? Are they now going to opt out for academies and come to us for that situation and, in essence, what does that do to public education, which everyone supports and everyone is involved in? Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator D'Allesandro, can you show me where in this legislation that it talks about a twenty-year contract please?

SENATOR D'ALLESANDRO: Let me see if I can get the piece of legislation. Let me just look at this. I don't believe it says twenty years, Senator Gatsas. But I wouldn't think you would put a contract together for an operation of this size without an extended period of time. So that is my implication. That is my inductive reasoning with regard to this.

SENATOR GATSAS: Are we supposed to induce reasoning when we write legislation or are we supposed to see what it is as a factual?

SENATOR D'ALLESANDRO: I think what we should do is look at legislation in a factual manner and we should use our intelligence to make a decision as to what we think this legislation does.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: You're welcome.

SENATOR ESTABROOK: Thank you, Mr. President. Just a clarification to that question since I was there at the hearing. The issue of the twenty years came up because, as the bill was originally drafted, as it was specific to the Bedford School District, it was also specific to a twenty-year contract. Then, when the language was changed, there was nothing changed in the language that would prevent that being one of the types of contracts that might be approved here.

SENATOR GATSAS: Thank you, Mr. President. I think the original legislation talked about it was really looking for chapter law, and it talked about 194:23 and 194:22. It made a combination of the two. It was very unclear because 194:23 talks about long-term contracts, and it included that in this paragraph. So the committee heard the same testimony that Senator Estabrook is talking about. It was unclear. What this does in 194:22, it allows for any district in the state to have two opportunities to make contracts, because it was not clear that it allowed a non-profit academy to provide public education in grades 9-12. It was very clear that the Department of Education stepped forward and said that the original legislation was much too broad, and it talked about contracts and it talked about twenty-year contracts, because it made reference to 194:23. This simply says nothing about a twenty-year contract 'cause it doesn't involve 194:23, which talks about the length of contracts. This merely gives the opportunity for school districts to get involved in one of two methods.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Senator Gatsas, it says in line one and two, in accordance with RSA 194:22 and 194:23, the Bedford School District is authorized to make a contract with the Bedford Academy. You said that that wasn't included in the discussion.

SENATOR GATSAS: That is not in the amended version, Senator.

SENATOR D'ALLESANDRO: Thank you.

SENATOR GATSAS: Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Foster Rule #42.

SB 68, relative to certain costs for the development of a high school in the town of Bedford. Education Committee. Ought to pass, Vote 6-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move that SB 68 ought to pass. Senate Bill 68 allows the voters of the Bedford School District, whose high school students are now tuitioned to Manchester, to bond the \$10.6 million now being paid for capital improvements to Manchester's school. Currently, the \$10.6 million is being raised over a two-year period through the normal budget process, resulting in an excessive tax burden on the residents of Bedford. A bill similar to this passed in 2004, but not in enough time for Bedford to take advantage of it. The Education Committee unanimously recommends that the bill ought to pass and asks for the Senate's support. Thank you.

Adopted.

Ordered to third reading.

SB 201, making technical corrections to certain environmental laws and the small business technical assistance program. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Burling for the committee.

Energy and Economic Development

February 2, 2005

2005-0144s

08/10

Amendment to SB 201

Amend RSA 21-O:19, I(f) as inserted by section 2 of the bill by replacing it with the following:

(f) Provide for the review of department outreach, education, and technical assistance activities for small businesses.

SENATOR BURLING: Thank you, Mr. President. I rise to move ought to pass with amendment on Senate Bill 201. This bill really makes two important but relatively minor changes to the interface between DES's small business programs and the clean air protection of the state of New Hampshire. The committee heard both Senator Gatsas and DES present their reasons for these changes. They also heard an amendment presented, which is truly technical on language related. You will see it on page ten of the calendar. The committee discussed the changes proposed and felt at the end that all of them clearly improved the interface between DES and small business performance in the state on these new clean air proposals. So the Energy and Economic Development Committee asks your support in passage of Senate Bill 201 as amended.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 83, establishing a commission to study issues relative to the comprehensive shoreland protection act and the public waters of the state. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Environment and Wildlife

February 2, 2005

2005-0147s

06/09

Amendment to SB 83

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study issues relative to the comprehensive shoreland protection act.

Amend the bill by replacing paragraph I of section 2 with the following:

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of environmental services, or designee.

(d) The director of the office of energy and planning, or designee.

(e) One member of a regional planning commission, nominated by the New Hampshire Association of Regional Planning Commissions, and appointed by the governor.

(f) A representative of the New Hampshire Lakes Association, nominated by the New Hampshire Lakes Association, and appointed by the governor.

(g) Two members of the public who are waterfront property owners, appointed by the governor.

(h) A representative of the New Hampshire Farm Bureau Federation, nominated by the New Hampshire Farm Bureau Federation, and appointed by the governor.

(i) A representative of the Home Builders Association of New Hampshire, nominated by the Home Builders Association of New Hampshire, and appointed by the governor.

(j) A member representing the University of New Hampshire, appointed by the governor.

(k) A representative of the New Hampshire Association of Realtors, nominated by the New Hampshire Association of Realtors, and appointed by the governor.

(l) An elected municipal officer of a waterfront community, nominated by the New Hampshire Municipal Association, and appointed by the governor.

(m) A representative of the New Hampshire Rivers Council, nominated by the New Hampshire Rivers Council, and appointed by the governor.

(n) A member representing forestry interests, appointed by the governor.

(o) A member who is a landscaping consultant, appointed by the governor.

(p) A member representing a conservation commission of a waterfront community, nominated by the New Hampshire Association of Conservation Commissions, and appointed by the governor.

(q) A member from the New Hampshire Marine Traders Association, nominated by the association and appointed by the governor.

(r) The attorney general, or designee.

(s) A member from the new Hampshire Wildlife Federation, nominated by the federation and appointed by the governor.

(t) A member from the New Hampshire Waterworks Association, nominated by the association and appointed by the governor.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall:

I. Review current shoreland buffer and setback standards and recommend buffer and setback standards that are consistent with other applicable laws.

II. Assess land-use impacts around the state's public waters.

III. Review current nonconforming use, lot, and structure standards and make recommendations to revise and/or clarify these standards.

IV. Explore funding options for the shoreland protection program at the department of environmental services.

V. Assess current definitions and size, type, and location standards pertaining to structures as outlined in the comprehensive shoreland protection act, and make recommendations to revise and/or clarify these standards.

VI. Recommend options, suggestions, or alternatives to the comprehensive shoreland protection act and determine whether it should be merged with other applicable laws such as the state's wetland laws.

VII. Identify areas of the comprehensive shoreland protection act in need of revision.

VIII. Review current structural exemption from setback requirements and make recommendations to revise and/or clarify these requirements.

IX. Review current viewing and access corridor options within the protected shoreland zone and make recommendations.

X. Review current permitting, waiver, variance, and enforcement provisions of the comprehensive shoreland protection act and make recommendations to revise and/or clarify these provisions.

2005-0147s

AMENDED ANALYSIS

This bill establishes a commission to study the effectiveness of the comprehensive shoreland protection act.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 83 ought to pass with amendment. Senate Bill 83 establishes a commission to study the effectiveness of the Shoreland Protection Act. The Shoreland Protection Act has been a vital tool in managing the public waters of our state. It is important to keep reviewing the Act to insure that it is working effectively. It is also important to continue to consider input from the various people and groups who are impacted by the Shoreland Protection Act. This bill, with the committee amendment, tries to get as many people around the table as possible. The commission established by Senate Bill 83 is an important step in continuing to provide well-informed protection for our state's public waters and shorelands. The Environment and Wildlife Committee voted unanimously 5-0 to pass this on to the body here in the Senate. We would appreciate your concurrence with the committee's report. Thank you, Mr. President.

SENATOR KENNEY: Thank you, Mr. President. Senator Barnes, I just had a question. Coming from the community that has the most lakes in the state of New Hampshire, we have dealt with the Shoreland Protection Act on many occasions, but we have found that, through the state of New Hampshire, often, over the years, that it has always been an enforcement problem. I am wondering if this study committee is going to look at the enforcement issues surrounding the Shoreland Protection Act and how we can make sure that we take care of this act.

SENATOR BARNES: Senator Kenney, being the Senator with the district that has the most lakes, I'm sure that you will show up at this commission and I'm sure you will make that point to the commission. So I am sure that it will be discussed.

SENATOR KENNEY: Thank you very much, Senator Barnes.

SENATOR BARNES: You're welcome.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 91-FN, relative to an increase in the co-payment for participation in the animal population control program. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gatsas for the committee.

Environment and Wildlife
February 2, 2005
2005-0141s
08/04

Amendment to SB 91-FN

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2005.

SENATOR GATSAS: Thank you, Mr. President. I move Senate Bill 91 ought to pass with amendment. Senate Bill 91 increases the copayment for the state's animal population control program. The program pays the remaining vet fees for spay and neuter procedures after participants have made their co pay. Veterinarians also contribute by discounting their services. The Spay Neuter Program is an important tool in controlling the state's pet population. This program shut down for two and a half months last spring because it ran out of funds. The committee amendment changes the effective date to July 1st, the beginning of the program's fiscal year. The Environment and Wildlife Committee asks for your support on the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 105, granting the executive director of fish and game authority to promote hunting, fishing, and wildlife-related activities. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Environment and Wildlife
February 2, 2005
2005-0139s
10/03

Amendment to SB 105

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 105 ought to pass with amendment. Senate Bill 105 gives the executive director of Fish and Game greater flexibility in promoting hunting, fishing and wildlife-related activities in New Hampshire. Some of the promotions that may be possible under this bill are package deals, contests with corporate partners, decreasing fees for promotional reasons or family license discounts. The Department of Fish and Game is a self-funded agency. It is important for them to be able to manage their marketing and entice people to try new outdoor activities. This bill will be a useful tool for the department and will help New Hampshire be competitive with other states. The committee amendment will make the bill effective upon passage so the department will be able to take advantage of marketing opportunities as soon as possible and help the lakes in all of our districts, and especially Senator Kenney with all of those lakes, draw more people to those lakes to be able to fish. The Environment and Wildlife Committee unanimously passed this and we ask your support here in the chamber. Thank you very much.

Amendment adopted.

Question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 65, ratifying changes to the state building code adopted by the state building code review board. Executive Departments and Administration Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. I move Senate Bill 65 ought to pass. Senate Bill 65 ratifies the changes to the building codes adopted by the State Building Code Review Board. A similar bill comes before the body every two years to be ratified by the legislature. Representatives of many different industries came to testify in support of this bill and expressed that these codes were well accepted across the state. We urge ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 100-FN, allowing the president of the National Education Association-New Hampshire to remain a member of the state retirement system. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This was a more difficult piece of legislation. To give you a brief history of what happened at the Retirement Board. Many years ago, before I was on the board of trustees, the IRS came and said that we were a governmental retirement board and that no public members could be in our retirement system or we would lose our tax exempt. As a result of that, there were private schools whose headmasters and teachers were in the retirement board and these were the people that were making it more difficult, and in effect, losing our status. Over a long period of time, and even to the point of lawsuits, to get these people out of the system so that we could keep our tax exemption situation. Now we have people trying to get back in again and we just can't allow that. Now what we have told people to do is that if they, as a result of leaving teaching...what happened in this case is the person is a teacher and they leave for four years to become chairman of a board so therefore, they are no longer a public, and they are no longer in the school system. Therefore, they cannot be in the retirement system. We have asked these people to present their case to the IRS to say, yes, I am going to be gone for four years, but I am coming back to teaching. If they come forward with a letter from IRS to the board of trustees, we will review that if we have permission from the IRS to do it. They don't seem to want to do that. We have given this advice to several people who want to get on the board. This is what has to be done. We would ask you to support the motion of inexpedient to legislate based upon the protection of the retirement board. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 16, establishing a pharmacy oversight committee. Health and Human Services Committee. Inexpedient to legislate, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move Senate Bill 16 inexpedient to legislate. The current process, which provides for a hearing in the Department of Health and Human Services, and an

appeals process through the courts, is sufficient. The committee unanimously recommends inexpedient to legislate on SB 16. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

SB 27-FN, relative to licensing facilities and home health agencies certified by the Joint Commission on the Accreditation of Healthcare Organizations. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Health and Human Services

February 1, 2005

2005-0131s

01/09

Amendment to SB 27-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to an exemption from the annual inspection of health facilities.

Amend the bill by replacing all after the enacting clause with the following:

1 Health Facility Licensing; Annual Inspection. Amend RSA 151:6-a to read as follows:

151:6-a Annual Inspection. The department of health and human services shall make at least one annual unannounced inspection of every facility licensed under this chapter, ***unless exempted by rules as authorized by RSA 151:9, I(b).*** For residential care facilities, defined in RSA 151:2, I(e), the inspection shall include a review of the programs and services offered in the facility to assure that the facility is in compliance with its current level of licensure, and a survey of the most recent individual resident needs determinations where such surveys are not done under the survey and certification process for Titles XVIII and XIX of the Social Security Act, as amended, to assure that the facility and its programs and services are appropriate to the needs of the residents. Inspection results shall be provided as a written report which distinguishes between those findings that do, and those which do not, indicate a pattern of care, or which demonstrate over the period of at least 2 inspections, a trend in the care of residents or management of the facility which has the potential for adversely affecting the health of the residents. The results of this inspection and any later inspection shall be posted in a conspicuous place in the facility in the manner determined by the commissioner of the department of health and human services. The results so posted shall indicate the facilities and services inspected and the results for each such facility or service. This section shall not apply to acute care general hospitals when the department and the ~~[joint committee for accreditation of hospitals]~~ ***Joint Commission on Accreditation of Hospitals*** have agreed on joint inspection standards.

2 Effective Date. This act shall take effect 60 days after its passage.

2005-0131s

AMENDED ANALYSIS

This bill exempts certain health care facilities from an annual unannounced inspection by the department of health and human services.

SENATOR KENNEY: Thank you, Mr. President. I move that Senate Bill 27-FN ought to pass with amendment. The bill as amended, provides the Department of Health and Human Services with the authority to exempt healthcare, long-term care providers, from certain annual inspections that are duplicate in nature. Healthcare providers are currently inspected on multiple occasions, by multiple accrediting organizations every year. Senate Bill 27-FN will streamline the process and allow healthcare providers to focus on their primary mission, which is to provide healthcare. The committee unanimously recommends ought to pass with amendment on Senate Bill 27-FN. I would also like to mention we have a floor amendment that puts language back into the bill inadvertently left out of the committee amendment we approved. So I ask for your support on the committee amendment, and then I will ask for your support on the floor amendment, which is 0229, which clarifies the name of the crediting organization. Thank you, Mr. President.

Amendment adopted.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

February 8, 2005

2005-0229s

01/09

Floor Amendment to SB 27-FN

Amend RSA 151:6-a as inserted by section 1 of the bill by replacing it with the following:

151:6-a Annual Inspection. The department of health and human services shall make at least one annual unannounced inspection of every facility licensed under this chapter, ***unless exempted by rules as authorized by RSA 151:9, I(b).*** For residential care facilities, defined in RSA 151:2, I(e), the inspection shall include a review of the programs and services offered in the facility to assure that the facility is in compliance with its current level of licensure, and a survey of the most recent individual resident needs determinations where such surveys are not done under the survey and certification process for Titles XVIII and XIX of the Social Security Act, as amended, to assure that the facility and its programs and services are appropriate to the needs of the residents. Inspection results shall be provided as a written report which distinguishes between those findings that do, and those which do not, indicate a pattern of care, or which demonstrate over the period of at least 2 inspections, a trend in the care of residents or management of the facility which has the potential for adversely affecting the health of the residents. The results of this inspection and any later inspection shall be posted in a conspicuous place in the facility in the manner determined by the commissioner of the department of health and human services. The results so posted shall indicate the facilities and services inspected and the results for each such facility or service. This section shall not apply to acute care general hospitals ***and critical access hospitals*** when the department and the ~~[joint committee for accreditation of hospitals]~~ ***Joint Commission on Accreditation of Healthcare Organizations*** have agreed on joint inspection standards.

SENATOR KENNEY: The amendment that we have that we're passing out, in legislative drafting, it was left out to include "critical access hospitals" in the language. As you know, around the state that there are more hospitals applying to become critical access hospitals. One of them

just recently is Memorial Hospital in Conway and I believe Huggins Hospital in Wolfeboro is soon to become a critical access hospital. So this will allow them to again, streamline their inspections with this type of facility.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 34-FN, relative to reimbursement rates for child care. Health and Human Services Committee. Ought to pass with amendment, Vote 5-1. Senator Martel for the committee.

Health and Human Services

February 3, 2005

2005-0168s

05/10

Amendment to SB 34-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court hereby finds that an essential component of Temporary Assistance to Needy Families (TANF) is ensuring that parents of young children have access to safe, affordable child care. To enable low and moderate income parents who need child care to work, attend school and job training programs, and otherwise meet public assistance eligibility requirements, the department of health and human services shall establish reimbursement rates for child care services that better reflect the current market rate for licensed child care.

2 New Section; Public Assistance; Reimbursement Rates for Child Care. Amend RSA 167 by inserting after section 3-e the following new section: 167:3-f Reimbursement Rates for Child Care.

I. The commissioner of health and human services shall establish reimbursement rates for child care under the state public assistance program. To the extent that federal funds are available through the Temporary Assistance for Needy Families (TANF) or the Child Care and Development Block Grant (CCDBG) programs or from other federal sources, the rates shall reflect the current market rate for such services, based on the following criteria:

(a) Effective July 1, 2005, rates for child care reimbursement shall equal 50 percent of the market rate as measured by the survey of weekly costs of licensed child care centers conducted on behalf of the department in 2004. Rates for license-exempt providers may be established separately from this provision.

(b) Effective July 1, 2006, rates for child care reimbursement shall equal 75 percent of the market rate as measured by the survey of weekly costs of licensed child care centers conducted on behalf of the department in 2004. Rates for license-exempt providers may be established separately from this provision.

(c) To determine the current market rate in subsequent years, on or before October 1, 2005 and every 2 years thereafter, the department of health and human services shall conduct a survey of the weekly cost of licensed child care centers and licensed child care homes. The survey may be based upon a valid statistical sample of all licensed child care providers in the state.

(d) Effective July 1, 2007, the base reimbursement rate for child care shall equal 75 percent of the market rate for licensed child care, as measured by the survey conducted under subparagraph (c). The department shall develop a sliding scale to adjust the base reimbursement rate based on the type of child care provider, family size, income, and such additional eligibility criteria as the department may establish.

II. No more than 20 percent of the total federal TANF funds received annually by the state may be used for the child care reimbursement rate increases required by this section.

III. In order to expand the accessibility and availability of quality child care, the department also may establish, by rule under RSA 541-A, alternative or incentive reimbursement rates for quality enhancements to traditional child care services, innovative or specialized child care, and alternative child care delivery systems. The department shall maintain and expand a system of agreements with child care centers participating in the child care public assistance program. Rates for such agreements shall reflect the additional administrative costs assumed by such providers.

3 Effective Date. This act shall take effect 60 days after its passage.

2005-0168s

AMENDED ANALYSIS

This bill requires state public assistance programs to include reimbursement for child care based on the current market rate for such services.

SENATOR MARTEL: Thank you, Mr. President. I make a motion that we recommit this bill back to our committee so that we can clean up some of the sections in it. There seems to be some confusion with one of the sections. Section...it is RSA 167-f, a. And we will re-examine that next time we meet and come back to the floor of the Senate with a bill that is cleaned up and refined. So I suggest that we recommit it and I ask my fellow Senators to vote for that motion.

Senator Martel moved to recommit.

Adopted.

SB 34-FN is recommitted to Health and Human Services Committee.

SB 42, establishing a pharmaceutical study commission to study direct purchasing of prescription medication by the state. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Health and Human Services

February 1, 2005

2005-0128s

01/09

Amendment to SB 42

Amend the title of the bill by replacing it with the following:

AN ACT establishing a pharmaceutical commission and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Pharmaceutical Commission. Amend RSA by inserting after chapter 126-Q the following new chapter:

CHAPTER 126-R

PHARMACEUTICAL COMMISSION

126-R:1 Commission. There shall be a state pharmaceutical commission consisting of 3 members appointed by the governor with the consent of the council. Not more than 2 members shall belong to the same political party. Each member shall hold office for a term of 6 years and until his or her successor has been appointed and qualified. If a vacancy occurs in the commission, it shall be filled for the remainder of the term. Any or all of the commissioners may be removed by the governor and council for cause.

126-R:2 Chairperson; Compensation. The chairperson of the commission shall be appointed and commissioned as such by the governor with the consent of the council, and his or her term shall be coterminous with each term of the governor unless his or her successor shall have been sooner appointed. The expiration or termination of a commission member's term of office as chairperson of the commission shall in no way affect the length of his or her term as a commission member as established under RSA 126-R:1. The annual salary of each member of the commission shall be as specified in RSA 94:1-a, and the commissioners shall receive their reasonable expenses while traveling in the performance of their duties, provided that they shall not be allowed as expenses, travel between their places of residence and their office in Concord, nor shall they be allowed board or lodging while in Concord.

126-R:3 Duties. The primary duties of the pharmaceutical commission shall be to:

- I. Provide the lowest possible cost for wholesale prescription drugs.
- II. Maintain proper health and safety controls.
- III. Assume responsibility for the effective, efficient, and self-sufficient operation of the commission.
- IV. Provide wholesale prescription drug service to the state and customers of the commission, pursuant to this chapter.

126-R:4 Requirements. The members of the commission shall devote their entire time to the service of the commission. No member of the commission shall be directly or indirectly interested in the pharmaceutical business. The compensation and expenses of the commissioners and the expenses of the administration of this chapter shall be paid by the state on the warrant of the governor with the approval of the council.

126-R:5 Offices; Seal. The commission shall be provided with suitable offices in the city of Concord. The commission shall adopt a proper seal.

126-R:6 Assistants and Employees. The commission may employ such assistants as are, in its opinion, necessary for the proper transaction of its business, and fix their compensation, subject to the rules of the director of personnel. The commission may secure any necessary technical or professional assistance.

126-R:7 Personnel, Procedures, and Responsibilities.

I. There shall be a bureau of marketing and sales to be headed by an administrator, who shall have such labor grade as may be determined by the division of personnel. The administrator shall, as directed by the commission, oversee all aspects of the commission's functions relating to marketing, merchandising, purchasing, store operations, warehousing, and distribution, and shall perform such additional duties as the commission shall from time to time assign.

II. There shall be a bureau of administrative services to be headed by an administrator who shall have such labor grade as may be determined by the division of personnel. The administrator shall, as directed by the commission, oversee all aspects of the commission's administrative functions, to include accounting, financial management, data processing, management information systems, human resources, and contracting, and shall perform such additional duties as the commission shall from time to time assign.

126-R:8 Commission to Sell. It shall be the duty of the commission to buy and have in its possession prescription drugs for resale in the manner provided in this chapter. Such prescription drugs shall be free from adulteration and misbranding within the meaning of the provisions of RSA 146. All purchases of prescription drugs shall be made by the commission directly and not through the department of administrative services. The commission may negotiate and purchase prescription drugs from any source. The commission shall be subject to all the provisions so far as applicable of RSA 9, but the commission shall be exempt from the licensing requirements of RSA 318:51-a.

126-R:9 Rulemaking. The commission shall adopt rules, under RSA 541-A, necessary to carry out its powers and duties under this chapter. The commission shall not adopt any rule in conflict with any provision of RSA 541-A.

126-R:10 Insurance. The commission shall have power to insure the state prescription drug warehouse or warehouses and contents against fire and sprinkler damage and such insurance shall be purchased through the department of administrative services.

126-R:11 Purchases by the Pharmaceutical Commission. The commission shall purchase prescription drugs from primary sources. For the purposes of this chapter, "primary source" means the manufacturer or producer. The commission may also purchase prescription drugs from entities within Canada whether a primary source or a wholesaler. If a primary source is not available, the commission may, if it feels it is in the best interests of the state, vote at its regular meeting to allow an exemption and shall explain why such exemption has been allowed.

2 New Subparagraph; Personnel. Amend RSA 94:1-a, I(b) by inserting the following:

- | | | | |
|-----|----|---------------------------|--------------|
| I. | GG | Pharmaceutical commission | commissioner |
| II. | HH | Pharmaceutical commission | chairperson |

3 Appropriation. The sum of \$1,000,000 for the fiscal year ending June 30, 2006 is hereby appropriated to the pharmaceutical commission for start-up costs associated with the purposes set forth in RSA 126-R as inserted by section 1 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Effective Date. This act shall take effect July 1, 2005.

2005-0128s

AMENDED ANALYSIS

This bill establishes a pharmaceutical commission that is responsible for buying wholesale prescription drugs and reselling to retail pharmacies and state agencies. This bill also makes an appropriation of \$1,000,000 for start-up costs.

SPECIAL ORDER

Senator Clegg moved that we Special Order the following Bill to Thursday, February 17.

SB 42, establishing a pharmaceutical study commission to study direct purchasing of prescription medication by the state.

Adopted.

SB 21, relative to voluntary mediated agreements in adoptions. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Gottesman for the committee.

Senate Judiciary
February 5, 2005
2005-0162s
05/01

Amendment to SB 21

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Probate Court Mediation Fund. Amend RSA 490:27, II(a) to read as follows:

(a) There is established in the office of the state treasurer a separate fund to be known as the probate court mediation fund. The sum of \$5 shall be added to each entry fee collected in the probate courts and shall be deposited in the fund for paid mediation in the probate courts *or, when funds are available, for paid mediation in family division cases related to: minor guardianships pursuant to RSA 463; the adoption of minors pursuant to RSA 170-B; the termination of parental rights pursuant to RSA 170-C; or abuse and neglect cases pursuant to RSA 169-C.* Costs of probate court mediators may be paid from this fund, provided that:

(1) Participation in the mediation sessions is not mandated by the court; and

(2) Mediation reports shall not be released to any judge or other officer of the court who may later decide or rule on the case without the written consent of all parties participating in the mediation.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 21 ought to pass with amendment. Senate Bill 21 would establish mediated adoption agreements in a very narrow circumstance, adoptions in abuse and neglect cases in which the Division of Health and Human Services is involved. In some cases, reunification with the parents is just not a possibility. In these events, the proposed mediation process can allow the parent, who knows in their heart of hearts, that they cannot be a parent to the child, and yet it is quite naturally having trouble letting go. This mediation process allows the parent to negotiate contact with the child such as visitation or to receive report cards from the school. The desired goal in establishing this mediation program would be to create permanency sooner if this is at all possible, to enable more responsibility of the birth parents and to achieve significant cost savings to the state in terms of court appointed attorneys, prolonged court time and/or costs of services. The committee amendment specifies that the previously established probate court mediation fund would be used in these mediations. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Very briefly. The probate court worked very diligently to put this together. It took a long period of time. What it does is it takes adoptions under the Child and Family Auspices and makes them a better situation. It gives the child a better situation. It gives the parent of that child a better situa-

tion. And really allows for more positive things to take place in that process. It is another good example of working together of a number of entities to make something good happen. I strongly support the legislation. I really commend the probate court for the work that they have done. Judge Maher and Judge Cloutier of Manchester has really done an outstanding job. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 75-FN, relative to the statute of limitations for a civil actions based upon a sexual assault case. Judiciary Committee. Ought to pass, Vote 6-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 75 be ought to pass. Senate Bill 75 extends the statute of limitations for the filing of a civil action based upon a sexual assault of a minor seven years beyond the minor's eighteenth birthday or if longer, three years from when the minor discovers the injury. Currently, the minor may only have two years or to the age of twenty if he or she is aware of the assault. Nationally, twenty-six percent of sexual assault victims know their predator. In the case of a minor, too often, this is a family member or other caretaker. Young adults are often still living with and financially dependent on a family member in their late teens and early twenties. This bill will give the victim a reasonable period of time to pursue the claim and also open up the opportunity for the minor to seek criminal prosecution but not give up the right to a civil remedy, as is the case today. Because of the emotional ties and dependency, a minor is rarely capable of coming forward prior to the emancipation. We heard testimony in a real life situation of a young woman who had been adopted from South America, was abused by her adoptive father for years. When she turned the age of twenty, she basically had to make a **TAPE INAUDIBLE** choice of criminally prosecuting or seeking a civil remedy and, by the time the criminal prosecution was over, the right to bring a civil case had expired, and there was a conviction there and she asked us not to let that happen again to somebody else. So the Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

Adopted.

Ordered to third reading.

Senator Boyce is in opposition to the motion of ought to pass on SB 75-FN.

SB 76, relative to the extension of restraining orders under the domestic violence protection act. Judiciary Committee. Ought to pass, Vote 6-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move that Senate Bill 76 ought to pass. Senate Bill 76 provides the court with the possibility of extending a domestic violence protective order for a five-year period when the safety of the petitioner was a concern. Currently, approximately 6,000 restraining orders are issued annually in New Hampshire. Of these, only about 100 request extensions beyond the one-year time period. Very few are contested but, in the cases where they are, the victim must appear in court with the perpetrator. In some cases, the court

appearance alone places the victim once again in danger. In these rare cases, the court would have the ability to extend the restraining order for a period up to five years. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

SENATOR BOYCE: Thank you. Senator Clegg, I have always been a little confused by things that end up in court. In this, on line, starting on line nine and into ten, it is talking about the extension of the order under this paragraph may be held within 30 days of the extension. Is that 30 days after or 30 days before or 60 days, you know, 30 before and 30 after? I am not sure what that means, within 30 days. Is it 15 days before or 15 after?

SENATOR CLEGG: As I understand it, it is 30 days after the extension has been requested. So there would be a notification, I'm sure.

SENATOR BOYCE: Wouldn't it be better, wouldn't it protect the rights of the person who is the object of this order, the defendant I guess in this case, wouldn't it be, wouldn't his or her rights be better served if that hearing was before, they could request a hearing before the extension? Wouldn't that...if the extension has already been made, and then they get a hearing, it seems like that is kind of the cart before the horse.

SENATOR CLEGG: Actually, I think it is just the opposite. If you ask for a hearing before you ask for an extension and one was granted, typically what happens is, one party goes in and asks for the extension, the other party is notified that an extension to the restraining order is being requested. Do you or do you not want a hearing? In very few cases, the other party says yes I want a hearing. So you wouldn't want to ask for a hearing, otherwise the courts would be overburdened. As you see, there are 6,000 and if you add even a 100 more hearings, and the other party had no intentions of ever contesting the extension...

SENATOR BOYCE: I guess my question wasn't as clear as I wanted it to be. I am just curious why we don't allow the defendant to have a hearing before the extension happens. This appears to say that the extension will happen and then they can ask for a hearing.

SENATOR CLEGG: I guess the only way that I can answer that is that an extension to a restraining order isn't granted without just cause. So, I am not worried that the justices are granting restraining orders without sufficient evidence that one is necessary. If someone doesn't like it, they have the right to go in and ask for a hearing because the evidence presented wasn't correct, after the restraining orders are done without the other party anyways.

SENATOR BOYCE: I guess that is my problem. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I just want to make a comment on this. We had testimony from two young ladies that had been terrorized by their former mates. One of them in particular had moved out of the state to South Carolina and is still terrified every day that she has to come back once a year to extend this restraining order. Thank you. One lady that signed up and testified from New Hampshire here, who wouldn't even put her name down on the witness chart, and had to have house security stay with her, coming in and out of the building she is so terrified. She signed the witness slip as "survivor". And when she testified before the committee, that she would guarantee that she is a New Hampshire resident, but would not give her name just in fear of what she lives in. This, to me, was very compelling to allow these

people, in very rare cases, to be able to extend these restraining orders. Thank you. I don't know why I am having a problem with that this morning. But the story was so compelling and it is rare cases I think, Senator Clegg had pointed out, that it is maybe a few a year that get this bad, but these people need to be protected and that is our job. Thank you very much.

Adopted.

Ordered to third reading.

CACR 8, relating to the highway fund. Providing that the highway fund may be used for highways and intermodal transportation projects. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-2. Senator Morse for the committee.

SPECIAL ORDER

Senator Clegg moved that we Special Order the following Bill to Thursday, February 17.

CACR 8, relating to the highway fund. Providing that the highway fund may be used for highways and intermodal transportation projects.

Adopted.

SB 32-FN, authorizing the department of safety to issue special amateur radio operator plates. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 32 inexpedient to legislate. This bill authorizes the director of the Division of Motor Vehicles to issue a special motor vehicle number plate to licensed amateur radio operators. Although the amateur radio operators are a commendable organization, the state has traditionally been reluctant to offer specialty plates to any group or organization. The Transportation and Interstate Cooperation Committee voted 5-0 and asks your support for the motion of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 96-FN, establishing Rotary Foundation special number plates. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the committee. I said in caucus that I am just going to say ditto.

Committee report of inexpedient to legislate is adopted.

SB 98-FN, relative to issuing duplicate registrations for off highway recreational vehicles. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

February 3, 2005

2005-0159s

08/01

Amendment to SB 98-FN

Amend the bill by replacing section 1 with the following:

1 New Section; Duplicate Registration. Amend RSA 215-A by inserting after section 22-a the following new section:

215-A:22-b Duplicate Registration. A registration certificate which is lost, stolen, mutilated, or destroyed may be replaced by a duplicate registration, upon payment of a fee of \$5 and completion of an affidavit setting forth the circumstances of the loss or destruction of the registration. The duplicate registration shall entitle the registrant to engage in all activities permitted on the original registration. All fees collected under this section for duplicate registrations shall be nonlapsing and continually appropriated to the fish and game department for the purposes described in RSA 215-A:23, VIII.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 98-FN ought to pass as amended. Senate Bill 98 allows for the duplicate OHRV registration for a lost, stolen, mutilated or destroyed registration. It was submitted at the request of the Department of New Hampshire Fish and Game. As of July 1, 2004 the department had taken over the management of the OHRV Registration Program and they did not have the authority to charge the usual \$5 fee. This bill is correcting that oversight and the committee amendment is allowing the money collected from the registration fee to be deposited into the department's general fund. The Transportation and Interstate Cooperation Committee asks your support for the motion of ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 12, relative to contracts with non-profit public academies.

SB 21, relative to voluntary mediated agreements in adoptions.

SB 65, ratifying changes to the state building code adopted by the state building code review board.

SB 68, relative to certain costs for the development of a high school in the town of Bedford.

SB 74, making certain technical changes in the insurance laws.

SB 75-FN, relative to the statute of limitations for a civil actions based upon a sexual assault case.

SB 76, relative to the extension of restraining orders under the domestic violence protection act.

SB 83, establishing a commission to study issues relative to the comprehensive shoreland protection act.

SB 91-FN, relative to an increase in the co-payment for participation in the animal population control program.

SB 98-FN, relative to issuing duplicate registrations for off highway recreational vehicles.

SB 105, granting the executive director of fish and game authority to promote hunting, fishing, and wildlife-related activities.

SB 201, making technical corrections to certain environmental laws and the small business technical assistance program.

SB 203, relative to leases and contracts for buildings or lands owned by the fish and game department.

HB 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system.

ANNOUNCEMENTS RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving messages and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

Out of Recess.

HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of hearing the Budget Address given by His Excellency, Governor John Lynch.

In recess for Joint Convention.

Out of recess.

RESOLUTION

Senate Clegg moved that the Senate recess to 10:00 a.m. on Thursday, February 17, 2005 for the sole purpose of introducing legislation, receiving messages and processing enrolled bill reports.

In recess.

INTRODUCTION OF SENATE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered 223, shall be by this resolution read a first and second time by the therein listed title and referred to the therein designated committee.

Adopted.

First and Second Reading and Referral

05-1045

SB 223-FN, relative to licensing nondepository mortgage bankers and brokers. (Flanders, Dist 7: Banks and Insurance)

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 135-FN-A, establishing a committee to study funding sources for the state laboratories and extending the appropriation to the department of corrections for the prison automation system.

Senator D'Allesandro moved adoption.

Adopted.

Out of recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

February 17, 2005

The Senate met at 10:00 a.m.

A quorum was present.

Senate Guest Chaplain, The Reverend Janet Lombardo, from Trinity Episcopal Church in Tilton, New Hampshire led the Senate in prayer.

When I look out at you I am struck by the fact that you represent the state of New Hampshire and that each of you are connected and rooted in a particular community with its own particular needs and concerns and yet, you are also connected to each other and those like Susan McLane who have gone before you, you are connected to and those who are yet to come. It is amazing how much we share in common. Let us pray.

Holy God, creator of all, help us to remember how connected to each other we are, how the things we hold in common are much greater than those that separate us. Help us to remember those who have gone before to show us the way, particularly this day Susan McLane, be with those who mourn her passing. Help this body to make the decisions that keep us connected and celebrate what we share in common, always being grateful for the many gifts You have given us.

Amen

Senator Green led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR D'ALLESANDRO (RULE #44): Thank you, Mr. President. Mr. President, I rise to speak briefly about one of our colleagues who recently passed away and who was mentioned in our Clerk's remarks. Reverend Jones gave a great eulogy for Susan McLane on Monday. I think it was absolutely apropos. I did a little research and, Susan, myself, Hugh Gallen and Rob Trowbridge sponsored a bill in 1974 called the Food Stamp Act. I am the only one left living who sponsored this bill. Susan McLane and I first met in 1973 when I became a member of the House. We worked together on a couple of significant pieces of legislation. One was the School Feeding and Nutrition Act, and, of course, the paramount bill was the Food Stamp Bill. I saw Susan McLane when she was in the twilight of her life, when she came to me and she said, "Lou, I have Alzheimer's disease." It was terribly depressing to me because of my association with Susan McLane over the years. A quality, quality legislator. A quality human being. I said to myself, what a privilege to have served with a woman of this caliber, who gave so much to this state. Her hard work for women's rights. Her hard work for social causes. Her hard work in bringing up a

family. But her hard work at being a good human being and a good person. My father passed away with Alzheimer's disease. So I know how difficult it is when you get into that stage of your life when you really lose contact with the world and you are in another world entirely. Susan recognized that and moved through that process with a great deal of dignity. When Reverend Jones spoke about her on Monday, he said she liked the church, but really wasn't there that often. I think that was an appropriate situation because it doesn't mean you have to be there if you're there in spirit, and she was there in spirit. She was that kind of a human being. She was that kind of a person. Every day I wake up and I say to myself, I am so privileged, so privileged, to be in public service. So privileged to know so many people who have given so much to this state. I am at a time in my life when I see these people passing away. Rob Trowbridge passed away. Hugh Gallen, who was a great friend, former Governor, passed away. Now Susan McLane passes away. They have left a great, great tradition for us to follow in, a tradition of public service, of giving of themselves so that others can do well. If there is any mark that we can leave on this earth, it is that we made it just a little bit better because of our stay. Susan McLane made my life a little bit better, I think has made the lives of many people in this room a little bit better and has certainly made an impact on the state of New Hampshire. May her soul and all the souls of all the faithful departed, through the mercy of God, rest in peace. Thank you, Mr. President.

SENATOR LARSEN (RULE #44): As one who sits in the seat that Susan sat and those before her, I would add to Senator D'Allesandro's statements how, what a tremendous role model Susan was for young women across the state, women of any age across the state, and what a tremendous role model she was for me. She had a big heart and worked hard. Could have stayed home, but instead chose to give back to her community and to her state. I will never forget her calling me in from Kuala Lumpur with this amazing voice saying, "Hello friend, this is Susan McLane calling from Kuala Lumpur" when she called a radio ad in to endorse my candidacy. I have always felt that I had big shoes to fill and a big seat to try to fill. I guess for many things she will be remembered opening the doors for people with mental illness and so many causes for which she stood for. I think as we see the lady slippers bloom in the woods this spring, think of Susan and remember the beauty that she gave to all of us. Thank you.

SENATOR BARNES (RULE #44): I would like Tammy, Brenda and Hank to join us, please. Those are a couple of tough acts to follow. Every time Senator D'Allesandro gets up, it is a very tough role to fill. Senator Larsen, you are filling that seat very well. You are doing a good job on it. You fit in there very well. The reason we are up here, Senator Roberge and myself are the only two Senators that sat here with Senator McLane when she was in this Chamber. And these three folks were also here working for the Senate when Susan was here. I was a rookie in 1992 and that was her last term. She sat, as Senator Larsen has talked about, and she was only one seat away from me. My fondest memories of Susan, shortly after being sworn in, I was in the LOB wandering around and she was in the office that I happen to occupy now. She was getting ready to move up, 'cause she was moving on up to the third floor. Susan McLane came up to me and she said, "congratulations. I have heard a lot about you and I watched you in the House, and I am happy that you are part of this Chamber." Then she looked at me and said, "You and I probably

aren't going to vote a lot alike, but that doesn't make a difference." And I gotta to tell you, she was one tenacious lady. I had a warm spot...that day I went home and told the wife I have a friend. She was the first person to welcome me to this Senate. I have been here...the other day I counted up...and instead of counting sheep, I counted Senators that I served with. I usually drop off before I get over here to this back row. But it is somewhere over 70 Senators. And we started off...I started off and Sheila, being the 'Deaness' of the Senate, right over there with Ted Gatsas, Senator Gatsas is sitting, we lost a good friend in Eleanor Podles. Right here, a fellow by the name of Junie Blaisdell. A fellow sitting right here in Bob Odell's seat, a good friend of everybody, and now we have lost another member of this Senate that I have served with. And now I feel sorry for poor old Eleanor, because she is out numbered now three to one. She is in the minority, but as time grows, it will even up. I know Sheila has something to say and she has some...she has an interesting comment. She served many years with Senator McLane. I am proud to have known her. And she was very tenacious. For her whole two years up here, she kept bugging me about the income tax. And she was a teacher, and she taught me that if you believe in something, no matter what anybody else thinks, you stick with it. So for the whole two years, she was banging on my head about an income tax. God Bless her, she knew where I was going to vote, but we were still friends. I appreciate my friendship with her.

SENATOR ROBERGE (RULE #44): I would like to say something. We talk about Susan being tenacious. She was tenacious for sure. I think she lost more bills than she probably passed, but she felt so passionately about what she did that it really didn't bother her. But one of the particular issues that she...and Susan loved children and she loved animals. So, this is one of the issues that Sue and I agreed on. It happened to be a bear bill. We agreed that I would speak and Sue would be the back up person because I was the sponsor on the bill and she was a co-sponsor. So I started to speak. I can't remember whether it was a leg-hold trap or whether it was bear baiting now because it was such a long time ago; however, this is what Sue used as her show and tell. So I had to bring my little friend up and, as I spoke, Susan stood up and she walked around with this bear and...I am not sure if we won the bill, but we had a lot of laughs that day.

SENATOR BARNES (RULE #44): I'll bet you two won the bill. Would any of you like to say a couple of words?

SENATE JOURNAL CLERK BRENDA MENTO: One of the things that I remember the most about Senator McLane was she was very active in the Senate Page Program. One of the young gentlemen that served with us, I will only say his first name is Jason. Jason came from a very poor family. His mother...it was a kind of typical family, unfortunately, that we hear of today, where the parents were divorced, the father left, they didn't hear from him so the mom didn't get child support. She worked two jobs to make ends meet for the family. Jason took interest in the Senate Page Program. He came in and he had holes in his jeans and he had an old sweatshirt. Susan...Senator McLane brought him home. She kind of took him under her wing and she bought him some clothes. He kept coming back to be our page. Back then, we had sessions at one o'clock in the afternoon, and he would come in after school and sit up in the gallery and watch and he would come in and talk with us after about bills. Senator McLane took his mom under her wing and ended up helping her get a

better education and helped her get an office job so that she only had to get one job so she could spend time with the children instead of two, and I always admired her for that. He went on to do very well. He did. He was the President of Concord High School, he went on to be the President of the Youth and Government, he got a full scholarship and he is in a very well-known college in Massachusetts somewhere, a very well-known college and he has done very well thank you to Susan McLane. Thank you.

SERGEANT-AT-ARMS HENRY WILSON: I remember Susan, again, through the Page Program. There are a couple of pages that stick out in my mind. One is that Brenda mentioned, whose last name was Jankowski, and the other fellow, the boy was Grappone. Now, both of these pages they were here, but they also worked in the campaign of Susan McLane, as well as Sylvia Larsen. So they worked the Republicans and the Democrats. It is a form of exposing the Page Program with a form of exposing younger people to what goes on in politics. I think that is what Susan was all about. Thank you.

SENATOR JOHNSON (RULE #44): Thank you, Mr. President. On a lighter note, I would just like to mention for Senator Barnes' sake, that Susan was a big champion of my jet ski bills.

SENATOR BARNES: And ever since she left, you had a problem getting anywhere with those. Is that correct?

SENATOR JOHNSON: Thank you.

COMMITTEE REPORTS

SPECIAL ORDER

SB 42, establishing a pharmaceutical study commission to study direct purchasing of prescription medication by the state. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Health and Human Services

February 1, 2005

2005-0128s

01/09

Amendment to SB 42

Amend the title of the bill by replacing it with the following:

AN ACT establishing a pharmaceutical commission and making an appropriation therefor.

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Pharmaceutical Commission. Amend RSA by inserting after chapter 126-Q the following new chapter:

CHAPTER 126-R

PHARMACEUTICAL COMMISSION

126-R:1 Commission. There shall be a state pharmaceutical commission consisting of 3 members appointed by the governor with the consent of the council. Not more than 2 members shall belong to the same political party. Each member shall hold office for a term of 6 years and until his or her successor has been appointed and qualified. If a vacancy occurs in the commission, it shall be filled for the remainder of the term. Any or all of the commissioners may be removed by the governor and council for cause.

126-R:2 Chairperson; Compensation. The chairperson of the commission shall be appointed and commissioned as such by the governor with the consent of the council, and his or her term shall be coterminous with each term of the governor unless his or her successor shall have been sooner appointed. The expiration or termination of a commission member's term of office as chairperson of the commission shall in no way affect the length of his or her term as a commission member as established under RSA 126-R:1. The annual salary of each member of the commission shall be as specified in RSA 94:1-a, and the commissioners shall receive their reasonable expenses while traveling in the performance of their duties, provided that they shall not be allowed as expenses, travel between their places of residence and their office in Concord, nor shall they be allowed board or lodging while in Concord.

126-R:3 Duties. The primary duties of the pharmaceutical commission shall be to:

I. Provide the lowest possible cost for wholesale prescription drugs.

II. Maintain proper health and safety controls.

III. Assume responsibility for the effective, efficient, and self-sufficient operation of the commission.

IV. Provide wholesale prescription drug service to the state and customers of the commission, pursuant to this chapter.

126-R:4 Requirements. The members of the commission shall devote their entire time to the service of the commission. No member of the commission shall be directly or indirectly interested in the pharmaceutical business. The compensation and expenses of the commissioners and the expenses of the administration of this chapter shall be paid by the state on the warrant of the governor with the approval of the council.

126-R:5 Offices; Seal. The commission shall be provided with suitable offices in the city of Concord. The commission shall adopt a proper seal.

126-R:6 Assistants and Employees. The commission may employ such assistants as are, in its opinion, necessary for the proper transaction of its business, and fix their compensation, subject to the rules of the director of personnel. The commission may secure any necessary technical or professional assistance.

126-R:7 Personnel, Procedures, and Responsibilities.

I. There shall be a bureau of marketing and sales to be headed by an administrator, who shall have such labor grade as may be determined by the division of personnel. The administrator shall, as directed by the commission, oversee all aspects of the commission's functions relating to marketing, merchandising, purchasing, store operations, warehousing, and distribution, and shall perform such additional duties as the commission shall from time to time assign.

II. There shall be a bureau of administrative services to be headed by an administrator who shall have such labor grade as may be determined by the division of personnel. The administrator shall, as directed by the commission, oversee all aspects of the commission's administrative functions, to include accounting, financial management, data processing, management information systems, human resources, and contracting, and shall perform such additional duties as the commission shall from time to time assign.

126-R:8 Commission to Sell. It shall be the duty of the commission to buy and have in its possession prescription drugs for resale in the manner provided in this chapter. Such prescription drugs shall be free from adulteration and misbranding within the meaning of the provisions of RSA 146. All purchases of prescription drugs shall be made by the com-

mission directly and not through the department of administrative services. The commission may negotiate and purchase prescription drugs from any source. The commission shall be subject to all the provisions so far as applicable of RSA 9, but the commission shall be exempt from the licensing requirements of RSA 318:51-a.

126-R:9 Rulemaking. The commission shall adopt rules, under RSA 541-A, necessary to carry out its powers and duties under this chapter. The commission shall not adopt any rule in conflict with any provision of RSA 541-A.

126-R:10 Insurance. The commission shall have power to insure the state prescription drug warehouse or warehouses and contents against fire and sprinkler damage and such insurance shall be purchased through the department of administrative services.

126-R:11 Purchases by the Pharmaceutical Commission. The commission shall purchase prescription drugs from primary sources. For the purposes of this chapter, "primary source" means the manufacturer or producer. The commission may also purchase prescription drugs from entities within Canada whether a primary source or a wholesaler. If a primary source is not available, the commission may, if it feels it is in the best interests of the state, vote at its regular meeting to allow an exemption and shall explain why such exemption has been allowed.

2 New Subparagraph; Personnel. Amend RSA 94:1-a, I(b) by inserting the following:

- I. GG Pharmaceutical commission commissioner
- II. HH Pharmaceutical commission chairperson

3 Appropriation. The sum of \$1,000,000 for the fiscal year ending June 30, 2006 is hereby appropriated to the pharmaceutical commission for start-up costs associated with the purposes set forth in RSA 126-R as inserted by section 1 of this act. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Effective Date. This act shall take effect July 1, 2005.

2005-0128s

AMENDED ANALYSIS

This bill establishes a pharmaceutical commission that is responsible for buying wholesale prescription drugs and reselling to retail pharmacies and state agencies. This bill also makes an appropriation of \$1,000,000 for start-up costs.

SENATOR MARTEL: Thank you very much, Mr. President. I am just in the process of rewriting my notes here. I move that Senate Bill 42 be inexpedient to legislate. This bill, even though the committee had voted to... It is an ought to pass motion, Mr. President. I was going to speak on the ought to pass motion while I was speaking here, as well as the inexpedient to legislate. It was an ought to pass motion, okay, that came out of the committee, and we voted strongly, okay, to support that motion. But since then, we have found out this morning that there is a sister bill to this bill in the House, which is coming through the committee in the House now, on its way where it does exactly the same thing. I would...this bill here is a new version of what the original bill was that it was a study committee. The prime sponsor of the bill...first I found out that it was wrong, it should have been a study commission, and re-wrote the bill in order to file an amendment to make sure that he got a study commission instead. The real purpose of the legislation was to create

that commission, and similar to that, the liquor commission, with three commissioners. Senate Bill 42 as amended, replaces the original bill with this. The commission renders itself as a good idea, but even though it would have the authority to negotiate lower prices with pharmaceutical manufacturers. As the debate went on, and I mentioned earlier, just a few minutes ago, about the fact that the sister bill is now going through the House, focusing on the same issues, the same exact language, almost. I found that it was really a little bit of a problem, problematic that we should be going forward with the bill, especially when there is still some...there could be some possible confusion with it. So, as the debate over the cost of price of prescription drugs moves on, it moves forward this session, the committee believes...I am going to ask you for some help right now with this, because the ought to pass motion was the motion that came out of committee and the ITL motion was...and I assume that...is there going to be an amendment, Mr. President, that comes out with this?

SENATOR EATON (In the Chair): I understand there is a couple of amendments.

SENATOR MARTEL: There are a couple of amendments. Well why don't I just sit back and let the amendments come through us? I will make a final comment after that. Is that fair?

SENATOR EATON (In the Chair): You're recommending ought to pass?

SENATOR MARTEL: I will go back and I will make the ought to pass recommendation with amendment.

SENATOR EATON (In the Chair): And you are asking to vote down the amendment with the ought to pass motion because other amendments are coming?

SENATOR MARTEL: That is correct.

SENATOR LARSEN: I rise to support the committee amendment. What we have seen is legal challenges to the ability of states to negotiate rebates for lower priced drugs for elderly and low elderly, low income folks in the state and in other states. There have been recent Supreme Court decisions which enable a state to negotiate those discounts. We need to keep all of our options open in terms of which are the best approaches to negotiating these discounts, whether it be a commission, whether it be with the commissioner of Health and Human Services, but we need to keep our options open. I would urge that we vote ought to pass with amendment to Senate Bill 42. That sends it to the Finance Committee and it enables us to keep that bill as we debate what is another bill coming, being heard on Tuesday, which will actually be the creation of an entity which negotiates discounts for the state. There are many options out there, not just in the House, but here in the Senate. It happens to be Senate Bill 110, and it is being heard on Tuesday. We need to keep our options open. So I would urge that Senate Bill 42 be recommended ought to pass with amendment and be sent to Finance. It buys us time to look at the whole picture and move from there. I think it is a mistake to deep six this at this point when this is such an important issue for the people of our state, the elderly and those who have difficulty paying for their prescription drugs as we know, being such an incredibly high priced item in our healthcare portfolio. Thank you.

SENATOR BOYCE: I just wanted to get in the record what this amendment really would do. It would set up a commission, very similar to the

Liquor Commission, which would have the ability to go out and buy drugs at wholesale and resell them at a profit, I assume, in the state. It also has in here, that there will be an administrator who will be in charge of marketing, merchandising, purchasing, store operations, warehousing and distribution. This appears to be, to me, an attempt to take over the pharmaceutical business in this state and turn it into the same type of operation as the liquor stores. Now that seems to me to be antithetical to the free market that we are charged through the Constitution to protect. It would set up a state run monopoly, it seems to me, again, which the Constitution says we should not do. We should not create monopolies outside of government. We also should not set up monopolies in the government. Whether or not the Liquor Commission is the right way to handle that, this is certainly not the right way to handle the pharmaceuticals. This would, if this was passed, in the long run, I think it would lead to a worse situation in this state rather than better. Thank you.

SENATOR BURLING: Thank you so much, Mr. President. I didn't realize we were going to have this discussion at this stage, but I'm happy to do it. I'm here to tell you that I intended to bring this bill because I have heard so many of you talk so passionately about the need to do something real about prescription drug costs. Each and every one of us represents an increasingly aging population. Each and every one of us is aware that our neediest constituents are, in many cases, being crushed by escalating costs of pharmaceuticals. And yes, I wanted to make sure that each and every one of us had a chance to deliberate on a whole range of ideas that might be used to force down the cost of drugs for New Hampshire citizens. I am not here to ask you to say, yup, let's do this. It is much too complex and much too serious a decision. But I did come with this bill, a year ago, because I wanted to give all of us, all 424 of us in this legislature, a chance to start thinking, I am sorry to use the phrase again, "outside the box". New Hampshire has a tradition of looking at novel ways of meeting the needs of the people, while at the same time, assuring the interest of state government. We know that New Hampshire is a major purchaser of pharmaceutical products. We spend the taxpayers' money to buy drugs for Medicaid and for the Corrections Department. That is an item in our budgetary system that will continue to grow if we don't start paying attention to real limitations on those increases. We have people in this state now who frankly will commit a crime so they can get into jail to have an organ transplant. That's happening. If we don't start to pay attention to the costs of pharmaceuticals, we're going to be bearing a staggering price. This bill is one of the series of good ideas. It may not be the ultimate idea that New Hampshire ought to adopt, but I wanted to give this Senate a chance to think about it. Is it a new and strange vehicle? No. I mean, when we start to talk about gambling in this state, that we were the first in 1964, we created a Sweepstakes Commission. Is there anybody in this room that thinks that the Sweepstakes Commission has been a failure? I don't. When we start to talk about how we were going to sell liquor in this state, we came up with a three-person Liquor Commission. Anybody want to go repeal the Liquor Commission? I don't. I don't because it is a realistic and sensible solution to a problem of how to balance the interest of the state with the needs of our people. What I had hoped would happen to this bill, and I will be absolutely candid is, that it would find its way to Finance, and that it would wait there, as bills sometimes do, while the other good ideas that are currently working their way through the

system, got to the point where it could join it. I hoped at that point a serious discussion would take place amongst us as to how we were going to address the real needs of the people of New Hampshire. That is what my interest was. I know from the bottom of my heart that the majority of you in this room want to do something real about pharmaceutical prices, and I know that a majority of you are beginning to worry that maybe at the national level, we are not dealing with this quite right. That was my agenda. There was nothing more subtle or devious about it than that. I did go to the committee, and I said, "you know, this got printed as a study commission. What I meant to have was a pharmaceutical commission." And I corrected it and I gave the committee the amendment which did that. It passed with flying colors and came out 6-0. If the bill survives this vote and the amendment that was adopted to get the bill into the form I originally wanted, passes, I will offer an amendment at that point to try and get it the last bit of the way to Finance. That is what I was about. That is what this is about, and I hope you will support me in moving it forward. Thank you, Mr. President.

Amendment failed.

SENATOR EATON (In the Chair): Senator Burling, did you have a second amendment?

SENATOR BURLING: Mr. President, as I am thinking here, I think if my committee amendment is gone, there is nothing left but a legislative study committee.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

February 10, 2005

2005-0260s

01/09

Floor Amendment to SB 42

Amend the title of the bill by replacing it with the following:

AN ACT establishing a pharmaceutical study committee to study direct purchasing of prescription medication by the state.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a pharmaceutical study committee to study direct purchasing of prescription medication by the state for resale to retail pharmacies.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. The committee shall solicit information from the following:

(a) The New Hampshire Independent Pharmacist Association.

(b) The National Association of Chain Drug Stores.

(c) The American Pharmaceutical Association.

(d) The Pharmaceutical Research and Manufacturers of America.

(e) The New Hampshire chapter of the American Association of

Retired Persons.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study which drug plans have the greatest potential for savings, the methods for purchasing drugs from manufacturers, the methods of distribution, and any other issue necessary for the state to act as a wholesale distributor of prescription medication.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

2005-0260s

AMENDED ANALYSIS

This bill establishes a committee to study direct purchasing of prescription medication by the state for resale to retail pharmacies.

SENATOR BARNES: Thank you, Mr. President. Has the amendment 0260s been passed out yet? Do you all have that? Everyone has the amendment? I understand that it was passed out at your caucus. Thank you, Mr. President.

POINT OF ORDER

SENATOR BURLING: Can I make a point of order?

SENATOR EATON (In the Chair): Sure.

SENATOR BURLING: Mr. President, I recognize that I am bedeviled by fourteen years of House process. I am not familiar with the situation in which a committee vote of 6-0 would come to the floor and then come out with a different recommendation from the Chair. Is that what happens in the Senate?

SENATOR EATON (In the Chair): It didn't come out with a different recommendation. Senator Martel explained the bill ought to pass. He had some other thoughts on it, which we have heard since he brought it out. I think when he spoke inexpedient to legislate, that was a misspeak on his part, that is why I questioned it when he first started.

SENATOR BURLING: I see. I see.

SENATOR BARNES: Thank you, Mr. President. I have before you a floor amendment to Senate Bill 42. All it does is turn this into a pharmaceutical study committee with three members of the Senate, three members of the House. We all do, and Senator Burling spoke very eloquently on it, as he always does. I think everyone in this room is concerned about the pharmaceutical crisis. I don't think there is anyone here that doesn't have a concern for that for our constituents. I think this amendment, sending it to a study committee, is the way to go and to show the folks out there that we are going to look at this and, if you look at line 15, you will find, one, two, three, four, five different groups that we think are key players in this that have been invited to be there as the study committee works on this very important issue. I would appreciate a vote of the Senate to pass this floor amendment. Thank you.

SENATOR BURLING: Thank you again, Mr. President. I would simply ask my friends if you would join me in supporting this amendment. This

is a bill that has been through a year and a half of process. There are people who are very interested in seeing us move forward and get off of the dime. This may be the way to do it. I intend to vote for this and I would ask you to join me.

SENATOR LARSEN: Mr. President, I move to table this bill. I have concerns with the...not with the idea of creating a study committee, but in fact, concerns with the formation...the membership of the committee.

MOTION TO TABLE

Senator Larsen moved to have SB 42 laid on the table.

Motion failed.

A division vote was requested.

Yeas: 8 – Nays: 15

Motion failed.

The question is on the adoption of the floor amendment.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Boyce is in opposition to SB 42.

CACR 8, relating to the highway fund. Providing that the highway fund may be used for highways and intermodal transportation projects. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move CACR 8 inexpedient to legislate. CACR 8 expands the uses of the Highway Fund to include intermodal transportation projects. The committee considered the legislation carefully and determined that the state does not have the funds to support this measure. While we certainly recognize the good intent of this legislation and agree that other modes of transportation should be encouraged, the committee does not feel that amending the Constitution is the right move. Currently the ten-year highway fund is \$500 million short of covering the projects needed. The committee came to the conclusion that diverting those funds further is not a responsible thing to do. The Transportation Committee asks your support for the motion of inexpedient to legislate. Thank you.

SENATOR FULLER CLARK: Thank you, Mr. President. Mr. President and honorable members of the House, I rise to object to the committee report of ITL. It is time that we modernize the uses of the State Highway Fund and look beyond the state relying on a single mode of transportation to answer all of the state's travel needs. When Article VI-A, known as the Good Roads Amendment, was passed in 1938, here and in 30 plus other states, we were at the very beginnings of developing a highway system for the state and the country. Our railroads were strong and thriving. Today, it is just the reverse. With ever-increasing traffic congestion, lost workers productivity, tourists sitting for hours on the way to the oceans and the mountains, polluted air and gas hovering around \$2 a gallon, it is clear that New Hampshire needs a twenty-first century balanced and effective transportation funding system that includes highways, rail, light transit, bus, bicycle and pedestrian ways.

New Hampshire's commissioner of Transportation understood this when she argued for the use of gas tax dollars to support the development of the Nashua rail project. With the decision of the Supreme Court last year, that Article VI-A as written in 1938, would not permit that the only...would not permit that. Clearly, the only way out of an outmoded funding plan for transportation in this state is to amend Article VI-A. Once 93 is expanded, and expansion that will best relieve traffic congestion for ten to twenty years, our only alternatives for the state will be bus, light transit and rail. From Newburyport to Portsmouth, from Nashua to Manchester and Concord. From Dover and Rochester to Conway, Laconia and the North Country, and from Littleton to Lancaster. An ever-maturing population in our rural as well as our urban areas, will need more bus and rail service as well. Critics say that we don't have enough money now to fund the highway projects in the next ten years. They are right. But there will always be more projects than we have money for. By adding consideration of intermodal transportation to the funding, we will have a choice to have this money as efficiently and effectively spent to insure the best possible transportation system for the state. Critics say alternate transportation should rely on public, private partnerships, while the gas tax continues to subsidize our highways. It is important to recognize that not all parts of the state will be able to create such partnerships without state support. Critics say highway users have the right to expect that their dollars will only be spent for highway construction, reconstruction and maintenance. By sending CACR 8 to the highway users who are sitting in traffic for hours at a time to get to and from work, we can ask them if they believe a state funded transportation system for the twenty-first century should only continue to be used for our highways. We can ask them if they believe that New Hampshire's current funding system for transportation is good for business, good for tourism, good for our economy and good for our environment. Please let them decide by overturning the committee report and passing CACR 8. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. And, with all due respect for my colleague from Portsmouth, I would like to say that the Highway Fund is a very precious fund that we have preserved for many years and I have had plenty of telephone calls on this. I have done some little research so that the members will understand what we are talking about here. There are 152 red listed bridges in this state, throughout the whole state. There are 282 nearing the red list. In addition to that, municipalities around the state have 399 red listed bridges. About two-thirds of the state highways have pavement conditions that need work. The interstates are fifty years old and the bridges were designed for a fifty-year lifespan. They are all coming close to the end of that lifespan. Culverts under the interstates are also fifty years old and many are in need of replacement. The current ten-year plan, as we have it right now, includes fourteen years of projects, all without consideration of inflation in future years. There are also traditional highway funded projects that are not even included in the ten-year plan, but have been identified for need throughout the state. The cost of salt has raised 30 percent this year, and the cost of gasoline and diesel fuel is also increasing. All this comes out of the Highway Fund for our infrastructure for the people to keep these roads up. Steel prices have doubled in the past year and asphalt prices have paralleled the steel climb upward. To cut the Highway Fund pie into smaller and smaller pieces will grow the needs of the state's existing infrastructure and preservation. In addition, the needed safety and capacity improvements around the state will continue

not to be addressed, and the use of the highways to support the highway infrastructure is appropriate, and to divert those funds for other purposes just serves to grow the list of unmet needs around the state. All of us understand in our districts that we have roads that need serious repairs and we cannot shrink that existing source. The only way that we can do it, and I don't know anybody that has the courage to do it around here, is to raise the cost of gas taxes. I say, let those people who pay that tax decide. Thank you.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to this CACR. The Highway Fund is one of the mechanisms that we have in this state of saying that the people who benefit from some part of the infrastructure shall pay the fee for maintaining that infrastructure. The money that flows into the Highway Fund comes primarily from the gas tax, but also from registration on vehicles, and it is restricted by the Constitution to be used only for highway related purposes. That is the way it should be. It is a fee on the users of the system to help maintain the system. The federal money that we pay on federal gas tax also goes into a fund which comes back in the form of federal subsidies to the highway maintainance. The change that is being proposed here is not proposing that a fee be imposed upon the users of the railroad to maintain the railroads. If that was the case, I might change my mind. But I don't think that that's what is being proposed. What is being proposed is that this proposed railway system that people keep saying they want to build and want to fund out of this Highway Fund. It has been tried before. The purpose for that is that they see a pot of money that they can tap to create a system that cannot currently be expected to pay for itself. Now if somebody was proposing to put a railroad between Nashua and Boston, which is I think, the latest proposal, it would connect to the Massachusetts system. If they were to propose that the fare for riding that train would be sufficient in all cases to pay for the installation, maintainance, repair, bonding to create it, whatever it takes to create that system, if the guarantee was that there was a fund like the Highway Fund, in the Constitution saying that all revenues flowing into this can only be used for the repair and maintainance of that railroad system, that would be okay. But to take money that people are paying as a fee for driving on the highways and divert it from maintaining those highways into something unrelated to those highways, would be wrong. I cannot support his amendment. Thank you.

SENATOR FULLER CLARK: Senator Boyce, are you aware that, because it is an interstate transportation system for rail, that it would be next to impossible to be able to provide a tax on the system? And secondly, are you aware that the federal taxes for gas tax are also used for rail and transit across the country?

SENATOR BOYCE: I am aware that the federal government does all sorts of things with tax money that is taken from the citizens. Whether or not it is the right thing to do is up to our representatives in Congress, not to us. But the right thing for us to do is not to take money from people in our state to fund something that cannot stand on its own and support itself. That is what I am against.

SENATOR FULLER CLARK: I would like to say that I think we should let the voters answer that question and not the Senate. Thank you.

SENATOR BURLING: Thank you, Mr. President. My good friends from District four and District nineteen have made the case for passage of

CACR 8. They'll probably be saying, "what is he talking about"? Well, look at what they just argued. Senator Letourneau has presented the most compelling argument for an analysis that concludes the gas tax is in a death spiral in trying to keep up with our highway system. The fact of the matter is a 1938 idea that was multi-state legislation at the time, was designed to maintain some kind of funding for a highway system that would support our growing automobile industry. Well, it has played out its useful life. It has played out its useful life because we're not prepared to raise gas taxes to the level that the rest of the world pays in order to maintain their transportation systems. Everybody who is familiar with this problem, in every jurisdiction in this country, knows that their gas tax receipts are not going to be sufficient to maintain the highway system which they currently have. We then have a choice. You can either raise the gas tax or you can continue down the death spiral, in which there will be insufficient gas tax funds to maintain the system which will deteriorate further, which will be less able and therefore much more prone to failure driving people to take other modes of transportation. The problem, of course, is we're not offering any other mode of transportation. And Senator Boyce, once we stop offering alternative transportation modes, we are defacto giving a monopoly in transportation to automobiles and trucks and we are stuck with a death spiral. We need to start thinking about when we're going to step outside this particular cul-de-sac. There are two ways to do it. Raise the gas tax. Raise other taxes and dedicate them to the maintainance of a highway system or begin to look for others ways to move people around this state. Thinking always, that at some point in the near future, events beyond our control may make gas so expensive that we can't afford to continue driving back and forth sixty two miles each day the way I do. We need to start thinking outside of the confines which we created in 1938 by passing this constitutional amendment. That is when Senator Fuller Clark's last question becomes so important. It is the people who put us in here because it seemed like a good idea. Sixty years later, more or less, it is much more. Isn't it time to let the people answer that question again? We are talking about their taxes and their roads. Maybe they should have a chance to say it is time for something else. That is the question that I think we ought to put before the people. I think now is a good time.

SENATOR MORSE: Thank you, Mr. President. I didn't know that we were going to debate gas taxes today. I have a strong opinion about that. The fact is, gas taxes have risen. The department saw about a 3 percent increase since the last time we raised that. I guess people back home are going to say to me, "the fact is, my income doesn't raise at that level, so why are you raising another tax" because it is going to come out of their pockets. I wasn't prepared to debate on that, but what I am prepared to talk about is the fact that we also heard in this committee, that the commissioner has not, has not, stopped working on intermodal transportation. I-93 has been developed with the fact that if there is a funding source for rail, which would have to be outside of the current funding source for that project, it is much bigger than you could ever put into it. Rail is available to it. She has not stopped looking at bike paths. You are going to see legislation this year for bus modes to go along with the I-93 project, but there is already a lot of communities that are working on bus transportation along with the park and rides that are meant to connect all of this bus transportation. I think that we evolve in this state. We build park and rides on side roads, which were ridiculous, for years. We learned. We put them out on the main street and we funded them.

We are funding three, I believe, in this coming year, in 2005 to be built, to be tied into the Concord transportation system right now. So I don't think anyone is ignoring this fact. I don't believe that at all. I believe that the commissioner formed this Long Range Transportation Committee that she funded outside of the state government because she wanted to get the people's opinion. She has twenty some people on there, two of them from the legislature, actually one right now. The fact is, she is looking at it. She is trying to find alternatives and trying to find out what people want. There will be a strong debate about gas tax coming out of that committee. But the fact is, I think this is the wrong way to do it, to tackle the Constitution. I think that we have major problems in transportation and we need to be aggressive in how we look at it. One of the major problems is the ten-year highway plan. We have let too much happen to it. We have let too many projects come in that our local communities don't even support. That is one thing that we have learned in the Long Range Transportation Plan, is that they are putting projects in that you couldn't even get a local vote for. That is just one thing. We have also learned that you are all struggling with small projects, and maybe they should be a way to get them done upfront. So I think there is a lot to learn, but I don't believe a change in the Constitution is the answer. I ask for you to vote inexpedient to legislate.

SENATOR KENNEY: Thank you, Mr. President. I'm glad that we have kind of struck the transportation nerve in the state of New Hampshire, because it's probably had to have been struck a long time ago. I am against...I am supporting the motion of ITL on CACR 8, but I come in with a little bit different perspective. In the Highway Trust Fund, there is a section in the overall pie of the expenditures that says 12 percent of other state agencies that kind of dig into that Highway Trust Fund. I have a concern about that because, if you look at that, that adds up to between \$60-\$65 million. So that goes to Safety, it goes to Health and Human Services, it goes to Judiciary, and you look at the capital expenditures and it is 46 percent of that total pie...is used for capital expenditures and the overall amount that DOT is expending is about \$513 million. If you go to the receipts, as far as how we collect the amount of money we do for the Highway Trust Fund, a good chunk of that is from the federal level, which is 31 percent. And we don't even have a federal transportation highway bill passed. It is unprecedented that we are almost into the second year of continuing resolutions and we need those monies to have a constant flow into our state. But, I guess my biggest concern with this is that we have got to sanitize the fund that we already have right now. We have got to cleanse it. We have got to make sure that the monies that go into the Highway Trust Fund are being used to repair our roads and to repair our bridges and to repair, you know, the older infrastructure in our state because we are getting beat up out there. I think the only way that we are going to be able to put more money or at least extract more money is to say that the dollars that go in are being used for the hard dollars on the street. I understand that we have to have personnel costs, we have administrative costs and what not, but I don't understand why a lot of this other money is going to the other agencies of this state. I think it is great that we have hit the transportation nerve in the state. We need to keep pressing it more often because the public is getting very concerned about the safety of the state, about the older infrastructure. But, at this point, until we resolve that problem, I will not support the CACR 8. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. Mr. President, I rise on behalf of myself and Senator Foster who was here a moment ago. He happens to be on the Passenger Rail Advisory Commission in the city of Nashua. My constituents have made it very clear to me that they want anything to happen that will make a train run from Boston to and from Nashua. I speak today against the committee recommendation on behalf of those who commute to and from Boston, and who sit in traffic for hours at a time, and for the communities in our region who need to have an alternative form of transportation. Once upon a time, there was a train that ran to Nashua and beyond. It no longer exists. We hope that someday that will come. Anything that can be done as an effort to make this come to pass would be greatly appreciated. Thank you.

SENATOR LETOURNEAU: I just want to make a small statement. I hope that I didn't leave any false impressions here. I am not advocating a gas tax. So I wanted to make sure that everybody understood that very clearly. Thank you very much.

The question is on the committee report of inexpedient to legislate.

A division vote was requested.

Yeas: 15 – Nays: 8

Committee report of inexpedient to legislate is adopted.

COMMITTEE REPORTS

SB 17, relative to the definition of educational institution for the purpose of higher education loans. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

Senate Education
February 8, 2005
2005-0218s
04/05

Amendment to SB 17

Amend RSA 195-E:1 as inserted by section 1 of the bill by replacing it with the following:

195-E:1 Declaration of Policy. It is declared to be the policy of this state that for the benefit of the people of the state, the increase of their commerce, welfare, and prosperity and the improvement of their health and living conditions, it is essential that students attending higher educational institutions be given the fullest opportunity to learn and develop their intellectual and mental capacities. It is recognized that the financial costs to obtain an education beyond the high school level are often burdensome or prohibitive, and it is essential that qualified students or their parents be provided with low cost financial assistance in order that the students may attend such schools and to reduce the total amount of loan payments following graduation. ***In order to achieve this policy***, it is essential that state residents be provided with an appropriate source of financing their postsecondary educations and that educational institutions ~~[within the state]~~ ***wherever situated*** be provided with appropriate additional means to assist qualified students or their parents financially so that the students might achieve the required levels of learning and development of their intellectual and mental capacities. In order to assure the continued viability of existing loan programs whereby educational loans are made available to qualified students or their parents, it is necessary and desirable to provide an efficient, stable secondary

market to which such loans may be sold, transferred, or pledged in exchange for funds with which the original lender will be enabled to continue or increase participation in such loan programs. Therefore, the general court has conferred certain powers on educational institutions, on loan corporations, on the New Hampshire higher education assistance foundation, and on the New Hampshire health and education facilities authority to assure the successful origination, distribution and collection of loans so as to accomplish the purposes of this chapter, all to the public benefit and good. It is further declared that the exercise by the educational institutions, the loan corporations, the New Hampshire higher education assistance foundation and the New Hampshire health and education facilities authority of the powers conferred under this chapter will constitute the performance of an essential governmental function.

Amend the bill by deleting section 2 and renumbering the original section 3 to read as section 2.

2005-0218s

AMENDED ANALYSIS

This bill redefines educational institution to allow such institutions to be located outside of the state for the purpose of higher education loans.

SENATOR ESTABROOK: Thank you, Mr. President. I move Senate Bill 17 ought to pass with amendment. Senate Bill 17 is enabling legislation allowing the New Hampshire Higher Education Loan Corporation to begin doing business with out-of-state agencies. This will enhance their market position as a student loan provider and allow them to offer outstanding loan products to college bound students coming into the state as well as college bound students in the state. This bill does not rely on any funding from the state and will help NHHELCO to service the life of the loan as well as provide more competitive rates. The Education Committee asks your support for the motion of ought to pass with amendment. Thank you.

SENATOR BOYCE: I just wanted to clarify the actual intent of this. You said that it was for students coming into the state. It is my understanding that this is only for students in the state...students from New Hampshire can get these loans. This would allow them to get loans at other institutions outside of the state.

SENATOR ESTABROOK: It will allow that too, yes.

SENATOR BOYCE: Well, as I read this, it says...if I may? It says, "state residents be provided with an opportunity to finance their postsecondary education." What is stricken is "within the state" and substituted with "wherever situated". I don't see anything that allows this to loan money to out-of-state students, whether they are in-state or out-of-state. It only allows, as I read it, for students from New Hampshire to get loans. This would allow them to get loans to go to BU or Bucknell or somewhere else.

SENATOR ESTABROOK: It would certainly allow that. Frankly, my understanding is that it would also allow the other, but I would yield to the committee chair if he has another explanation.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 82, requiring a course in civics for high school graduation. Education Committee. Ought to pass with amendment, Vote 3-2. Senator Estabrook for the committee.

Senate Education

February 8, 2005

2005-0215s

04/10

Amendment to SB 82

Amend the introductory paragraph of RSA 189:11, III as inserted by section 1 of the bill by replacing it with the following:

III. In all high schools in the state, there shall be given a course of instruction in civics. This course shall be a one-half unit of credit required for graduation, and shall replace one-half of the social studies elective unit of credit as set forth in the administrative rules of the department of education. The civics course may be locally developed provided, at a minimum, the course provides exposure to current governmental affairs and covers the following areas:

SENATOR ESTABROOK: Thank you, Mr. President. I move Senate Bill 82 ought to pass with amendment. Senate Bill 82 will require a half-credit course in Civics for all secondary students. This requirement would replace one-half of the currently required social studies electives. The current standards of the Department of Education guidelines, lumps Civics in with American History, New Hampshire History and New Hampshire Government, in a year-long course. Civics is covered almost in passing. A legislative study committee recommended Civics be made a graduation requirement. However, the draft version of the new school approval standards are ambiguous as to whether or not Civics will be required. Even then, it is just a draft, meaning Civics could be removed unless this bill is adopted. In working to define an adequate education during my freshman term in the House, I was struck by the constitutional language regarding the purpose of education. Part II, Article 83 states "knowledge and learning generally diffused through a community being essential to the preservation of a free government." Clearly, the legislature has a responsibility to ensure civics education. This bill fulfills that responsibility and the Education Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment Adopted.

The question is on the adoption of the bill as amended.

A division vote was requested.

Yeas: 11 – Nays: 12

Motion failed.

The question is on the adoption of the bill as amended.

A roll call was requested by Senator D'Allesandro.

Seconded by Senator Estabrook.

The following Senators voted Yes: Burling, Green, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

Yeas: 10 - Nays: 14

Motion failed.

Senator Bragdon moved inexpedient to legislate.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against that motion. We're talking about an educational component that allows you to learn how to be a responsible citizen. The United States of America has just spent \$300 billion to get the right to vote for people in Iraq. Fifteen hundred American lives have been lost and over 12,000 Americans have been wounded. We are still there. Why did we do it? So they could have an election two weeks ago. And yet we say that we don't want our students in our high schools to learn the process, to learn about government, to learn about their civic responsibility. We talk about it being a cost. Baloney, it is no cost. It could be part of the American History requirement. Where are we if we don't support giving our young people a basic education on how to be a good citizen? Where are we? Is this Mississippi when we wouldn't let blacks have the right to vote? I am appalled that this chamber, after seeing what's going on in the world, will not put an element in our education to teach people to be responsible citizens! It seems to me absolutely the antithesis of why we are here. I can't believe it. And I am a teacher, and proud of it, who taught Civics. I taught it at Kenneth High School in Conway, New Hampshire; taught it at Bishop Bradley High School in Manchester; taught it at New Hampshire College; and continue to teach it today. We should have a program K-12 about civic engagement. We should be telling people if you don't participate, you are giving up a basic freedom. This nation founded on basic principles of participation. We are the cornerstone of the free societies in the world and we won't let Civics be taught to our high school students? I am, it seems...I can't believe this. Are we back in the eighteenth century? Huh, when we wouldn't allow women to vote? That was number one. If you didn't have property you couldn't vote. Now we don't want people to know. To me, it is absolutely astounding to me. And this isn't the first time we have gone through this process. This bill has been before us time and time again. We all talk about getting the vote out. We all talk about participation, and yet, when we are given an opportunity to make it happen, what do we do? We say no! We're not talking about taxes! We're talking about education and giving people an opportunity to learn about their state, their country, their city. I just find this unbelievable. Listen, my grandparents came from oppression to come to this country. Ladies and gentlemen of this Senate, I mean we all, we are all here to do the right thing. I just find this one incomprehensible. Truly. I served on my local school board for ten years. I try to be a responsible citizen as every one of you does. It just seems to me that a Civics requirement for graduation is fundamental to the democratic process. It is fundamental. I hope that you will not vote inexpedient to legislate, will think about this, and will support something that is good for everybody. It makes us better citizens. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I rise for two reasons. I have great respect for the previous speaker. But, anytime anyone wants to liken my vote to a racist act that happened in Mississippi, I think he has gone over the edge. I didn't vote no because I'm a racist. I voted no

because I believe that our schools are doing a good job. I don't buy into that theory that only here in the legislature, when we pass a law, will our schools actually teach our children something. Because I know in the district that I represent, my schools do teach Civics. If somebody's school isn't teaching Civics, I suggest you go to the school board meetings or maybe the school district meeting and change it. Don't come up here and expect us to pass a law if you're not doing the right thing at home. It is not about whether women can vote, because in my district they can vote. Maybe in yours they can't. But we don't need to legislate everything from up here. It is time you took a little personal responsibility back home. It is time the people back home took a little personal responsibility. You want to change the courses that your school teaches, then go to the meeting and change them. Go to the school board. Run for school board, and get it done. But, please, don't liken me to a racist because I don't believe the state needs to tell everybody what to do every minute. Thank you.

SENATOR GREEN: I guess I take a little different tack on this. Number one, I want you to know that we heard no opposition beside here, in committee. I believe there was one gentlemen by the name of Howard Wilson who spoke against it, but it wasn't for the same reasons we are talking about here. He felt that the government shouldn't do anything to impose any kind of law against anybody. We, in this state, for many years, and I come from a background of education, have required, as a state, both legislatively and through a Department of Education for teaching certain courses to our children because we feel that, if they are not required, that they won't be taught. I have no problem with going to my local school board. I served ten years on the school board, it doesn't bother me a bit. The problem is that there are certain basic educational fundamentals. Either you believe in them, and you believe that our young children should receive instruction in those areas or you don't. Most people will agree, and we have mandated by the way, not only at state level, but the federal level, reading is required. We also agree that mathematics is required. I think it is basic. I think that we would all vote for that one hundred percent. Not only have we done that, the federal government has got into the state business of requiring education. I didn't know anywhere in the federal constitution where education was required. That was a state responsibility. So I take that state responsibility very, very serious. Now I happen to believe that civics and government are one of those fundamentals that every child should have instruction. Does that mean they are going to learn? No. It means you give them an opportunity to learn. There is nothing in this bill that would require additional expenditures on the part of the state. Nothing in this bill that would require that. This is not a fundamental financial problem. It is a concept and an attitude of what you believe good education is all about. Why are we voting against, other than...I understand the philosophical belief that you don't think the state should be mandating anything. I understand that. But I don't hear anybody other than this vote just now, telling me good reasons why we shouldn't be teaching Civics, and why we shouldn't make that a requirement of the curriculum. I do also know, as the result of discussion with people around here, yes, there is a recommendation on the minimum standards that one-half a credit be the requirement as part of the social studies credit requirement in there. But that is proposed. It is going to take a long time for it to happen. I was surprised to hear that this has been debated before. I wasn't here on all of these debates, so I didn't know that, okay? But I was surprised. Why would you debate this? I don't...I just haven't figured out what the ob-

jections are. I can't think of any other than maybe local control and local school boards. But local school boards already have on them requirements for curriculum, mandated by the state of New Hampshire. I think on that list of mandates for instructing our children should be instruction in good government. I just think that that's basic. I think it is as basic as reading. I don't understand the objection, and I strongly support this legislation. The vote will be what it is, but it certainly makes me wonder what is going through our heads and not allow this to go forward. I just, I am dumbfounded. Thank you very much, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator Clegg, did I hear you say in your testimony that all of the local schools can do this? The towns can do it, so it is a local control issue?

SENATOR CLEGG: Yes, Senator. I believe that every school has the ability to provide whatever education they want, including what the curriculum is.

SENATOR BARNES: I agree with you. I sat on the school board in Raymond and I thought that was something that I could do as a school board member. I have a follow-up if I could. Would you, believe Senator Clegg, for all the years that we have been here, all of us have been here, and we just saw it about an hour ago, we saw the Danville Elementary School up here, and I think that is part of the civic process that they are teaching in our schools? I think most every fourth, fifth grade class in the state of New Hampshire, at some time, during our two years, wanders up here. I think they get a good civic lesson when they come into our chamber and into the House chamber. So I don't think it is...do you agree with me, that you think that is a great idea and part of the civic lesson process that these schools are all going through?

SENATOR CLEGG: I certainly agree with you, Senator.

SENATOR BARNES: Thank you, Senator.

SENATOR LARSEN: What's interesting to me is that the passions run so high on what seems to be such a basic element of our democracy, which is an understanding of it, and an understanding that we need to bring along the young people to understand their civic responsibilities. Right now there is in fact, I sat in on the House or I believe it was a House and Senate Civics Education Committee. There is a requirement to teach U.S. History and New Hampshire History, and oh, by the way, if you can tuck it in, U.S. Government and New Hampshire Government in one year. That is a tough act to follow. That is tough to fit all that stuff in one year. So guess what fails to be taught in a substantial way? That is government issues. Other social studies requirements are a half-year of economics and one year of social studies electives. But we are not teaching the most basic element of what forms our democracy, and that is the way in which democracy works, and how do we bring along a generation of young people who understand this. I have seen polls that show if a child, a young person has asked some of the basic precepts of our United States and state Constitution, they will vote no on some of these questions if they are framed in plain English. There is a lack of understanding of the very roots of our democracy. One-fourth of all students in the national assessment of educational progress revealed that in the nation's fourth, eighth and twelfth graders, were less proficient on a test of civic knowledge. One-fourth failed to demonstrate even a basic understanding of political methods and process. Twenty-five states do not...only twenty-five states require civics education. We were one of the

early signers of the Constitution, this state. We hold ourselves up as a primary state of educated people who make choices on the President of the United States to be. We need to be bringing along our young people. Thomas Jefferson said "if a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be." When he founded the University of Virginia, he said, "I fully understood that democracy's very existence depends upon an educated electorate." The most basic education in keeping a democracy strong and free is having people understand how it works, and young people need to do that. I urge you to vote for this bill.

SENATOR ESTABROOK: Thank you, Mr. President. I have felt passionately about this issue, as I said, ever since I was a freshman member of the House defining adequacy. And, ever since the next term Representative Dickinson and I brought in the same bill to the House, which spurred Speaker Chandler to create the legislative study committee that then recommended Civics as a requirement. I would like to speak, not to my colleagues necessarily who believe strongly that this should be left completely to local control, but to my colleagues who believe that this is something that should be left to the State Board of Education. There is no one here, I think, that respects the authority of the State Board of Education more than I do. I think that was evident in the bill I brought in yesterday to ED & A. But, whether or not the State Board of Education pushes this issue through Rules, and I am also a member of JLCAR. First of all, I know that that process will take a very long time, and the likelihood of that process being complete in time for districts to include Civics in their curriculum next school year, will in all likelihood be lost, and we will have one more class of students graduating without this requirement. That alarms me, because again, when I was a member of the House, and my daughters were high school students, their friends would question whether I needed to travel to Washington on weekends because of my newly elected position. Now, I am sure that all of you would be taken aback to think that high school students confuse the state and federal legislatures. But that is the reality, and the reality is that the level of understanding our graduating high school students have of the way their state government works, of the way the federal government works, and how they can become involved, is appalling to me. Something must be done. Now, whether or not the State Board adopts this in Rules, and whether or not the JLCAR Committee approves it even if they do recommend it. The second reason I think we need to do this is because, as Senator Green said, this is something so fundamental to the purpose of education that it is something we need to legislate. We need to make a statement as a legislature that we recognize the importance of this. Partly for that reason, this very same bill is going through the House at this moment. And because so many of us feel that this is so fundamental, I know that some of my colleagues here, I think, Senators Boyce and Letourneau, are also sponsors on that House Bill. This should not be a partisan issue. This should be something we all care about and something we all want to stand up and say as a Senate we feel is important.

SENATOR BRAGDON: Thank you, Mr. President. I made the ITL motion for a number of reasons, most prolifically because this is at least the third biennium where this bill has come to the House or the Senate or both. Each time, it has been turned down with the request of the Department of Education look into the matter, because it was felt by the

House and the Senate that they had the proper authority in this matter. As a result of their once a decade review of curriculum, the new guidelines from the Department of Education include a change from one year of History and Government and Civics to a special half-year graduation requirement, just as this bill requests, for Government and Civics, and takes it away from the general Social Studies elective, just as this bill suggests. And it goes further. For the elementary level, it requires all schools to provide opportunities for students to acquire knowledge and an understanding of Civics, which is not mentioned before. At the middle school level, opportunities for students to acquire a knowledge and understanding of Civics, which was not required before. This action by the Department of Education addresses the concerns raised by the people who sponsored this bill in the manner that both the House and Senate have agreed to in the past was the proper way to address it. I believe this is scheduled to come to JLCAR in April. It will come to JLCAR before a bill like this could even take effect. There is no financial impact to the rule, so JLCAR is not going to have a problem with that. So I would urge you to support the ITL and leave the Department of Education to go ahead with these minimum standards they propose to address this. Thank you.

SENATOR GREEN: Senator, the issue of whether or not we say that the authority should be in the hands of the State Board of Education, do you believe that the State Board of Education thinks they also have the authority to create kindergartens?

SENATOR BRAGDON: I am not sure, Senator, what the Board of Education thinks they have the authority to do.

SENATOR GREEN: For the record, I believe that that's the case. Do you believe that the Senate, itself, should make a statement regardless of what the State Board of Education's going to do?

SENATOR BRAGDON: I believe the Senate has the right to do whatever it does through its voting.

SENATOR GREEN: Thank you, Senator.

SENATOR FOSTER: Thank you, Mr. President. Senator Larsen sort of referred to this. But it occurred to me, as Senator Clegg was speaking previously, that we have actually done what we are trying to do here, and this is putting meat on the bones. Looking at the RSAs and sometime in 1923, this legislature passed an RSA that says, "in all public and private schools", and it was important enough to say the private schools had to do it, "in the state, there shall be a regular courses of instruction in history, government and constitutions of the United States and New Hampshire, including the organization and operation of New Hampshire municipal, county and state government, and of the federal government." What this does here is, I think, put an exclamation point on what we, our predecessors said back in 1923, and then went back in 1975 and amended it in some fashion. I haven't had a chance to look at what changed, but there is nothing unusual about this. A previous legislature said this is important stuff, we have got to teach our kids these things. What this bill does, I think, is emphasize it, put it into the high schools, which is an important place for it to be. I agree with Senator Barnes that it is important to have young people come in here, but they're fourth graders. We don't even allow pages in here until they are seven, eight or ninth grade. I know that changes a little bit, but it is because they really don't appreciate completely what is going on here. It is important

to put it into the high schools. Kids are asked to vote when they are eighteen. We always bemoan about how few of them do. You know, this might help. This is important that we move forward on this. Thank you very much, Mr. President.

SENATOR ODELL: Thank you, Mr. President. I certainly didn't expect to speak on this issue today, but those of you who know me a little bit, know that I am passionate about civic education and another term "civic engagement." I am going to support the ITL motion of Senator Bragdon's, for the purposes and mainly of what he suggested. I would hope my colleagues would think that none of us here are against civics education. It was George Vlangas from Manchester, New Hampshire who was an inspiration as my Civics teacher and History teacher in Milford High School, that inspired me to take a look at politics and government and go on to study economics and government. I think that the motivation for me to be sent as a Representative of New Hampshire to the second congressional conference in Washington in December for two or three days with several hundred other people from around the country who are adamantly in favor of civic involvement and civic engagement and civic education. I think that we have to understand that not only does Civics come to us through the classroom, but it comes to us through many other processes within the public or private school system. Whether it is an election for a class officer, whether it is an involvement as a volunteer, on and on and on. So I hope that those who oppose the ITL motion, don't have qualms about the fact that all of us, I think, here, because of the fact that we are here, believe in civic education.

SENATOR BURLING: Senator Odell, I take you absolutely at your word, and I believe you to be a man who passionately cares about this. But, you are also a man who lives in the same community that I inhabit. As I look at the world today, I see our children increasingly learning their view of government from talk radio, from angry newspapers and from the kind of media exposure which characterizes government as either on the take, dishonest, not worthy of consideration or out to get them in some way. Senator, I wonder how democracy defends itself against its own fringe media, if we don't take the time to teach our kids what's real. How do we do that, if we don't, as a group of 24 stand up and say this important?

SENATOR ODELL: Possibly, Senator Burling, you would like to come with me when I meet regularly or periodically with the Association of Social Studies Teachers, or you can join me next week when a group from Saint Anselm's, their Civic...the political center from the universities that collaborate, I think, it is called Civic Pride. We meet about once a month to deal with these specific issues. I think that we teach and educate every day by the leadership that we give as individuals and collectively as a body. If we do our job, you don't have to worry about right-wing or left-wing talk radio people. If we are good role models for the people in our communities. If we are out in the schools seeing children and speaking **TAPE CHANGE** a good civic person. In other words, a good citizen of the community. That was his fundamental. He wasn't worried about math or science or anything else. That was his principle goal in education. So I don't think individually we solve all the problems, but collectively, going down the same road, and join me, if you have the time and the interest, to work with others in the state of New Hampshire who feel really strongly about this.

SENATOR BURLING: I will be glad to accept your invitation. Next week is not so good, but I will be there. You just tell me when and where and I will be there.

SENATOR ODELL: You are invited, Senator.

SENATOR JOHNSON: Thank you, Mr. President. It is rather coincidental that tomorrow I will be speaking to a second grade class at Interlakes Elementary School of which my great grand daughter is a member. I will be speaking about civics. Thank you.

SENATOR BARNES: Thank you, Mr. President. As I listen, I'm excited to hear both sides of this issue, feeling as strongly as they do. Perhaps in the next session next year, somehow, someone can help me with an awful problem that I have with curriculum in the state of New Hampshire. I don't refer to Civics, Senator D'Allesandro. I refer to United States History. My wife and I raised three children. Those children went through the public schools in the state of Massachusetts, Pennsylvania, New York and New Hampshire. A little bit of each. There was a war in this country. It was 1950 to 1953 that took 33,000 lives. In all of the history books of my children, there was this much in the book about the Korean War. So we just have a civic problem, we have a problem with our United States History. So maybe some of you folks who are so passionate on all of these things, I am passionate on United States History, and I would like to see something in New Hampshire, more than a paragraph for 33,000 dead young men. Thank you.

SENATOR D'ALLESANDRO: Thank you, very much Mr. President. First, to the distinguished Majority Leader, I meant no affront. I have great respect for you and your abilities, and didn't mean in any way to infer anything of a racist nature. I just want to give you an analogy and an illustration. When I was in the United States Marine Corps, my drill instructor was black. When we left the base, he couldn't go into the same restaurant that I did. He couldn't drink at the same bar that I did. He couldn't go to many places that I could. That was a terrible, terrible situation. I believe to some extent, that has been corrected, to some extent, by the Civil Rights Act of 1964 and the Voting Rights Act of 1965. I know that you support that and always would support that. So please, there was no personal affront. To Senator Barnes, the distinguished Senator Barnes from Raymond. Sixty thousand men died in the Vietnam conflict. Some of them were my students. I go to the Vietnam Wall and I touch the name of Al Page who was my classmate at the University of New Hampshire, who is an MIA from Derry. I touch the name of a student that I had that Senator Martel remembers. I see his mother every time I am downtown in Manchester. I have a great feeling for that, and certainly that should be part of American History and, if it isn't, it should be changed. But I think what I am saying is we have a fundamental responsibility and that fundamental responsibility is to teach in our schools how to be a good citizen. Now, as I said, I was a Civics teacher. I spent the time and effort to do that. I hope that my students are good participants because of it. Why do I think this is so important? I think it is so important because we're making a statement. We're making a statement that we believe this has to be done. I have served on my local school board. I have run for the local school board. I was chairman of the Curriculum and Instruction Committee, so I know what it is to work through the process. This is another part of that process that I fully support. I think that we come here to do the right thing and this gives us the opportunity to do that. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I appreciate the kind words from the Senate Assistant Minority Leader. If there is one thing that he and I have in common, our blood boils at the same temperature. I do, however, find it hard to believe that a Marine who wanted to get someplace, couldn't get in. So I am going to assume your DI didn't want to go there. There is nothing in the world that stops a Marine. Again, I appreciate your words.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Green.

Seconded by Senator Estabrook.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

The motion of inexpedient to legislate is adopted.

SB 141-L, authorizing the establishment of certain reserve funds by the Gorham, Randolph, and Shelburne school districts. Education Committee. Ought to pass, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. This should be much easier, I hope. I move Senate Bill 141 ought to pass. Senate Bill 141 is enabling legislation allowing the Gorham School District, the Shelburne School District and the Randolph School District to establish a capital reserve fund if voters approve the formation of a cooperative school district between these three communities. Currently, these school districts have roughly \$1 million in a capital reserve fund that would have to be returned to the citizens of these towns if the original school districts are dissolved and the new cooperative school district is approved by the voters. This is a local bill providing a one-time exemption for these three communities. The Education Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 80, permitting the Emerald Lake village district to enact and enforce regulations to protect its public water supply. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Johnson for the committee.

Environment and Wildlife

February 9, 2005

2005-0239s

06/10

Amendment to SB 80

Amend the title of the bill by replacing it with the following:

AN ACT permitting the Emerald Lake village district to enact and enforce regulations to protect its public water supply and to have a health officer.

Amend the bill by replacing sections 2 and 3 with the following:

2 Village District Health Officer. The health officer of the town of Hillsborough may appoint a health officer for the Emerald Lake village district, who shall be subject to the approval of the village district commissioners, the town of Hillsborough selectmen, and the commissioner of the department of health and human services, and who shall, when appointed, be deemed a deputy health officer of the town of Hillsborough, and shall have all powers within the Emerald Lake village district as town health officers have under RSA 128 and RSA 147, subject to the direction of the town health officer and the department of health and human services. The health officer shall receive such compensation for services within the village district as determined by the village district or its commissioners. The voters of the village district shall raise and appropriate funds to compensate the health officer.

3 Adoption by District. The authority set forth in sections 1 and 2 of this act shall not become effective unless the voters of the Emerald Lake village district, acting at the annual district meeting, vote to adopt the provisions of this act.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 80 ought to pass with amendment. Senate Bill 80 allows the Emerald Lake Village District to take steps necessary to protect its public water supply. Currently, cities and towns have the authority to enforce state environmental laws, but the village district does not. This bill will allow the village district to enforce laws, adopt regulations and hire a health officer. The people of the district are concerned about their water supply. This is enabling legislation that will allow the voters of the village district to decide whether they want to raise funds to hire a health officer and enforce regulations. The committee amendment was drafted to make it clear that the village district, and not the town of Hillsborough, will raise the funds to compensate the officer. It also insures that the vote on this issue comes up at the annual district meeting and not a special meeting. The Environment and Wildlife Committee asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 142, extending the reporting date of the commission to study issues relative to groundwater withdrawals. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 142 ought to pass. Senate Bill 142 allows the commission studying issues relative to groundwater withdrawals to continue their work until November 30, 2006. I sponsored this bill on behalf of the members of the commission. This commission is made up of six legislators and fifteen stakeholders. The commission members have been doing excellent work together. However, this issue is very complex and it is important that they have the time to continue evaluating information. Senate Bill 142 was supported by every person who came to testify on the bill and by all of our committee members. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. I rise in support of the recommendation by the committee for two reasons: 1) I have served on this commission with Senator Johnson. The work that that commission is doing is very vital to the state. Secondly, I have, as you know, in my district, one of those contentious areas called USA Springs. And let me tell you, having had that experience and continue to have it, if you had it in your districts you would understand how complex this issue is. The commission, I think, is getting at the basic issues that need to be addressed by the state. In my opinion, we do not currently have state laws that are consistent with the goal of protecting the residents of our communities. I think we have got to continue to look at that issue and I know that the commission is doing that and I strongly support their activities and their work.

Adopted.

Ordered to third reading.

SCR 1, endorsing a farm viability task force. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Environment and Wildlife

February 8, 2005

2005-0233s

08/04

Amendment to SCR 1

Amend the resolution by replacing the 4th paragraph after the title with the following:

Whereas, the agricultural interests of the state expressed overwhelming concern that the university of New Hampshire cooperative extension needs to be properly funded, particularly an increased commitment to funding agricultural extension specialist positions, in order to continue serving them properly; and

Amend the resolution by deleting the 5th paragraph after the title.

Amend the resolution by replacing all after the resolving clause with the following:

That a farm viability task force be established by the governor, which would include agricultural agencies and all agricultural interests, and to include in its duties:

I. Reviewing and utilizing the 1979 New Hampshire food policy committee report, studying and documenting the role and contributions New Hampshire agriculture plays in a healthy and safe local food supply and in maintaining open space; and

II. Exploring the need and options for funding the University of New Hampshire cooperative extension agriculture positions; and

III. Studying the applicability and benefit of the farm viability programs found in our neighboring states to New Hampshire agriculture; and

IV. Identifying current and potentially burdensome rules and regulations to agriculture and ways the state of New Hampshire can assist; and

V. Promoting and expanding agricultural based tourism, community supported agriculture, farmers' markets, farm stands, and pick-your-own enterprises.

SENATOR BARNES: Thank you, Mr. President. I apologize to you for having two and a quarter pages here to read. But, this came about because of the Farm Viability Study that was conducted last summer, last

fall. A committee which I was very happily appointed to by the President of this body. We went to five different communities around the state. We were in Keene, we were up in Lancaster, over in Derry, listening to the farmers in the state of New Hampshire. I will proceed because I know that you are all waiting for lunch and I will move along as quickly as I can, but it is very important that we know that we have a lot of farmers in this state, and there is some problems out there. This is to bring it forward to this body and to move it on to the next body. I move SCR 1 ought to pass with amendment. This is the bill language as it would read with the amendment. "Whereas, farming and other agricultural interests are a vital part of New Hampshire's economy and need much more attention and included with that is horticulture." I am sorry that Senator Morse isn't here now, because he is a farmer. Senator Morse is here. He is a farmer. He has a business that a lot of people...a nursery business we don't think of as farmers, but there's a farmer right there, Senator Morse. "Whereas, they intertwine many different state agencies and programs, which need each other for survival and growth". And this is a very important one because this came up at every area and it was important enough for the President of the University of New Hampshire to come over and address our committee. "Whereas, University of New Hampshire Cooperative Extension needs a full examination to insure that the programs are able to and are supporting the agricultural interests of the state". And, that came up at every meeting and is very important to our farmers throughout the state. "Whereas, the agricultural interests of the state expressed overwhelming concern that the University of New Hampshire Cooperative Extension needs to be properly funded", and I am looking at you Senator Morse, seeing you are the chairman of that committee that is going to be doing that..."particularly an increased commitment to funding agricultural and extension specialist positions, in order to continue serving them properly; and Whereas, there are laws, rules, and regulations that are hindering the economic viability of New Hampshire farms; now, therefore, be it resolved by the Senate, the House of Representatives concurring that a farm viability task force be established by the governor, which would include agricultural agencies and all agricultural interests, and to include in its duties: Reviewing and utilizing the 1979 New Hampshire food policy committee report, studying and documenting the role and contributions New Hampshire agriculture plays in a healthy and safe local food supply and in maintaining open space; and exploring the need and options for funding the University of New Hampshire Cooperative Extension agriculture positions". Senator Morse, once again, that is directed toward you. And studying the applicability and benefit of the farm viability programs found in our neighboring states to New Hampshire agriculture; and identifying current and potentially burdensome rules and regulations to agriculture and ways the state of New Hampshire can assist; and promoting and expanding agricultural based tourism, community supported agriculture, farmers' markets, (which we all have in our districts), farm stands, (which we all have in our districts), and pick-your-own enterprises." The Environment and Wildlife Committee asks your support for the motion of ought to pass with amendment. Thank you for hearing me out.

SENATOR MARTEL: Thank you very much, Mr. President. I strongly urge...I will be brief. I strongly urge that the members of the Senate please concur with the ought to pass motion. The town of Litchfield is probably one of the largest agricultural areas in the state of New Hampshire and the southern tier of the state. It really produces an awful lot

of produce that goes worldwide. Its long fertile fields, okay, many of which now, sadly to say, have become golf courses or are becoming construction sites for developments. But there still lies many, many acres of land, maybe millions of acres of land in that region, okay, which are still being harvested every fall and summer time. So I urge my fellow Senators to please concur on this and have an ought to pass. I thank you very much, Mr. President.

SENATOR MORSE: I guess Senator Barnes gave me the opportunity. I was up at four o'clock. I did take the dog out. I didn't milk the cow and I was at the nursery by five o'clock this morning. But on a serious note on that piece of legislation, in my industry, when you debate invasive species, and you start to take some of the products that we cannot sell here in the state of New Hampshire, and at the time, I think we were the leading state in it, whereas someone as strong in agriculture as Connecticut didn't even outlaw it, I think it is wrong. I think had I been quick at the time, that would never had got through the House when I was a House member. I wasn't, and I just think it is a serious business in this state. I think you have a lot of them up in this district right in here that are growers and everything. Instead of limiting what we can do, I think it is important that you look at our business and what they are doing for jobs in this state because it has become an industry that is very successful and we could use help with, especially with the invasive species because those are some of the best plants that we sell out there, and I have yet to see a barberry euonymus that has affected any landscape in my district except for a positive note and I just think we went a little bit too far. So thank you. I do support the cooperative extension service. They are an amazing tool. I one time had to calculate the weight of putting a landscape on the top of a building and they were able to do it just with calling them and saying, "have you ever thought about this?" They called me back within an hour. So they are a service that is incredible to this state. We keep their phone number on the wall, visible for everyone to use whether it is pesticides or anything else, because it is a great service, honestly Jack. So thank you.

SENATOR EATON (In the Chair): I think that we also have to thank our small farmers. I know that Senator Odell was up very, very early this morning with the chickens and the ducks and the lambs. We need to keep those going, too. So thank you, Senator Odell.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 50, establishing a committee to study forming an independent board of psychology. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-2. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move that Senate Bill 50 to be inexpedient to legislate. Although clearly written and with good intentions, the committee feels that the parties involved had a sufficient amount of time to come up with a solution but the issue is still unresolved. The committee feels that this is an issue that should be resolved under the New Hampshire Board of Mental Health Practice, and that the psychologists have a separate sub-committee to discuss their current issues. The Executive Departments and Administration Committee asks your support for the motion of ITL. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.**Senator Foster rule #42.**

CACR 7, relating to restricting the use of all funds deposited into the education trust fund to education funding. Providing that all funds deposited into the education trust fund shall be used exclusively for elementary and secondary education. Finance Committee. Inexpedient to legislate, Vote 3-1. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move CACR 7 inexpedient to legislate. This constitutional amendment requires that all funds in the Education Trust Fund be used only for elementary and secondary education. Currently, low income hardship relief grants are paid out of the Education Trust Fund. This legislation would not allow that. Current statute already provides that Education Trust Fund be used for adequate education grants. RSA 198:39 reads: "The state treasurer shall establish an education trust fund in the treasury. Moneys in such fund shall not be used for any purpose other than to distribute adequate education grants to municipalities' school districts pursuant to RSA 198:42, and to provide low and moderate income homeowners property tax relief." The Finance Committee asks for your support for the motion of inexpedient to legislate.

SENATOR FOSTER: Senator Morse, what currently happens now, so I understand this, that there is excess funds in the Education Trust Fund at the end of a biennium? In light of that statute, it sounds like the money ought to stay there. Is that what actually happens?

SENATOR MORSE: The Education Trust Fund shall be nonlapsing. The state treasurer will invest that part of it that is over, but we haven't had that situation. Basically, you're looking out of our distribution this year. There was about three hundred and eighty some million that we forecasted in that account. The state is required out of general funds to fill the rest of the account. You had donor towns, too, so that total makes up the \$350 that we...I mean the \$450 that we distribute. But, they are required to invest it.

SENATOR FOSTER: I guess I am mistaken. I thought that I read someplace that there was excess money in the Education Trust Fund from the last year and that it went to the general fund. Are you saying that it repaid money that had been taken out of the general fund and it was an accounting thing or what occurred? Do you know?

SENATOR MORSE: I don't know what occurred on that, but while we are talking about this, I think it is probably a point to explain something that I can see could happen this year, that would concern me even more than what's trying to be done here. Because basically, if we take that \$380 number, that those taxes which are listed here currently do, and we use the forecast this year of, you know, the increase being at 6 percent, puts us a little over \$400 million. Then if we use the forecast that is being used for next year, of a 6 percent increase, we're up to somewhere around \$430 million. Then if we add a cigarette tax of \$80 million, we're at \$510 million going into this fund, which I think most education plans that I have seen in the House are between \$450 and \$460 million worth of funding. The balance of that I am sure, in the budget right now, is intended to fund other things in the state. I am sure when the Governor's plan came through, that was the intention, is that whatever is in money in this state, is going to be used for other things. And

I just...if you go forward with this, that \$510 would be locked in there. You couldn't use it in general funds. Today it is not that way. Today without a cigarette fund, you don't have enough money in this, and the general fund is actually working in the other direction.

SENATOR FOSTER: One more follow-up if I may. You read the statute to me and I thought it sounded like when the money goes in, it can only come out for two purposes. But it sounds like what you are saying you're concerned about that for this upcoming, or maybe not this year, but the next fiscal year. Is that right?

SENATOR MORSE: It wasn't my concern when I voted on this in committee. I think it is wrong to tie our hands like that. That wasn't my concern, but having gone because, you know...Senator Larsen brought up a good point. She could put an amendment on this bill and solve the one issue that we discussed in committee. That was hardship relief. And, I said there is more to it than that, because I don't believe in this anyway. Then when I went and looked up the law and saw the way the funds are being used and the specific things in the fund right now that say we are going to use it for that...we have everything on our plate right now. It has all been presented to us. The budget and education plan. Play that scenario out the way it has been described to us and there's going to be more money in this account and we can't get at it.

SENATOR FOSTER: Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. Mr. President and honorable members of this Senate, I rise to object to the committee report of ITL. The citizens of New Hampshire have a right to expect that when state policymakers establish a dedicated fund, as the legislature did in 1999 for education, the monies from that fund will only be spent for what they were designated for. This is especially true for education, since time and time again, I have heard taxpayers around the state complain about the fact that money from the state's Education Trust Fund has been spent on many other initiatives than education. Just last week, the committee for Sensible School Funding released a report about diverted dollars showing an increase in spending on projects unrelated to education. This report only undermines further our voters' confidence in how we are handling the state's education dollars. To make matters worse, in 2003 and 2004, when monies for the Education Trust Fund came in higher than the estimates in 2003 at \$21.6 million, and in 2004 by \$7.87 million, state policymakers transferred these dollars, a total of \$28.5 million to the general fund. This transfer of funds was \$12.85 million more than had been provided by the general fund in 2002 when monies in the Educational Trust Fund came in under budget. This transfer of monies was clearly in violation of the language already in law that you have just heard from Senator Morse, which states that monies in such fund shall not be used for any other purpose than to distribute adequate education grants to municipality school districts and to provide low and moderate income homeowners property tax relief. Only by passage of CACR 7 will we be able to hold the state to a higher standard of performance, prohibiting the legislature from raiding the funds in years of plenty. Only by passing CACR 7 will we make it possible for the Education Trust Fund to create a reserve in good years to offset the years when our revenues are not so strong. And only by passing CACR 7 will the voters of New Hampshire be able to have a direct say in their support for education and a renewed trust in the state's decision making. At the hearing, concerns were raised that such an amendment would

eliminate funding for the statewide property tax hardship grants. Language could be retained that allows such funding to continue. And, if we succeed in passing a new education fund that eliminates the statewide property tax, this concern would be moot. Shouldn't we at least place the same level of protection on education funding that we do for transportation? If we have a dedicated fund for highways protected by our Constitution, shouldn't we have the same for education? Do we want to send a message to our constituents that transportation is more important than education? I would certainly hope not. So I ask you to join me in overturning the committee's report of ITL and passing CACR 7 on to the voters. It is the right thing to do for the state, the people and our children. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. My apologies. I had a quick signing to do. Mr. President, I speak in support of the committee report for the following reasons: A): Education is an entitlement. There are two entitlements in the state of New Hampshire - indigent defense and the Education Trust. So the communities never get short changed. They get all of the money that we have appropriated. I think that is very important, and I say that because I was on the Committee of Conference that wrote that law. So I think, number one, they always get the money. Number two - the hardship grants. We brought that up in committee. They're very important. We all talk about property taxes and how we want to reduce property taxes. Not one person who has applied for a hardship grant has been refused one. That is from Stan Arnold who was the Commissioner of Revenue Administration when we started this and Phil Blatsos. So we are getting that money out. I believe that we made a special effort, correct me if I am wrong Senator Clegg, to get DRA to send information out to all of the communities, so that those who had a hardship with their property tax could take advantage of these dollars. We made these dollars nonlapsing and moved them into the second year of the biennium because they weren't used in the first year. People who had a hardship could apply in the second year of the biennium. That was our concern with regard to the property taxpayer. Thirdly, it just seems to me that we put into statute the will of this legislature. We made it an entitlement and, in the wisdom of this legislature, we wanted to take care of people who were paying excessive property taxes. This constitutional amendment would deny that. I, as a Senator, cannot support that. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I, too, sat on that Conference Committee. Yes, we made education funding an entitlement and we proceeded to say, "and we will set annually the entitlement based on what we think our state budget can afford." But, we went to the business community and we said education is important to the economy of this state. Will you allow us to bump up business taxes in this state to support education? They said, yes, education is worth it. Then we went to the real estate community and we said, "we're going to bump up the real estate transfer tax and we're going to put it in the Education Trust Fund. Trust us, it will be used for the education of our people. We increased and created an auto rental tax and the people said, "you can't do that, that's going to harm our economy." The people who are renting cars in our airports help us to pay for education. We increased taxes to support education during those Conference Committee debates. The utilities agreed. We had an agreement that this education was worth it and good for our economy. So we created an Education Trust Fund. In

that language, which is statutory, not constitutional, not in the Constitution, we said that “monies in such fund”, the Education Trust Fund, “shall not be used for any purpose, any other purpose, other than to distribute adequate education grants to municipalities, school districts, and to provide low and moderate income, homeowners property tax relief.” It is a red herring to say that we forgot or we didn’t include hardship grants in the language because most of us hope that the statewide property tax is going away, which makes hardship grants unnecessary. There will be still property tax hardships in this state, but it won’t be blamable on the creation of a statewide property tax. But the real issue is that the state of New Hampshire’s annual financial report, and we talked about this last year, some of you weren’t here, but the state of New Hampshire’s annual financial report, take a look at it. It says that those funds that we increase taxes for came into the Education Trust Fund \$21.6 million over budget in 2003 and \$7.87 million in 2004. If you look at that report, it says in 2002 we were under budget. In 2002, we were under budget \$16.6 million. So, in 2003, the Fiscal Committee transferred \$16.6 million to the general fund to “reimburse prior year transfer.” Then that same year there was another transfer of \$5.015 million to quote, and it is in the *State of New Hampshire’s Annual Financial Report*, “to eliminate the current year surplus in the Education Trust Fund.” Surplus? What is a surplus in education? We are always short of money, not over. We used it to feed the state budget which is, as we know, a fast sucking sound that can pick up any money from education that we might hope for. Again in 2004, there was a transfer of \$7.871 million to the general fund from the Education Trust Fund. Again, if you look in the *State of New Hampshire’s Financial Report*, in quotes, it’s written there, it was “to eliminate the current year surplus.” Surplus in the Education Trust Fund. What would this constitutional amendment do? It would restore trust that the funds increased for the purpose of education or in fact going to fund education. Second, it would begin to build up a fund for education in the good years that might offset years when revenues are not so strong. Third, it would allow voters to have a voice in education funding. Fourth, it would help stabilize education funding and prohibit the temptation to raid the fund for state budget demands. And fifth, it places the importance of education on the same level as highways, roads. Ask people in this state what is important to them. They will say, schools, educating our children. Roads are important, but we only dedicate funds to roads. We have never made a statement that education is as high, if not higher, requirement. So I think that this is a good question to put before the voters. I was going to sponsor this bill, instead worked with Senator Fuller Clark because it is good to put this before the voters. It is good for them to trust that what we say goes on. It is good for them to believe that they are...if they are paying increased taxes, which all of us are in various ways, that they are in fact being used for the purposes for which you agreed to their increase. I urge you to vote CACR 7 ought to pass.

SENATOR GATSAS: Thank you. Senator Larsen, the numbers that you’re talking about as surpluses, would you believe that that would mean that no general fund dollars were used in the Education Trust Fund in any of those years? And in my recollection for the four years that I sat on that Finance Committee, that the minimum transfers going into the Education Trust Fund were at least \$50 million. So are you saying that your belief is that the \$50 million didn’t come out of general fund dollars to fund the Education Trust Fund because there was a surplus?

SENATOR LARSEN: I believe that we budgeted \$50-\$60, often times at \$60 million from the general fund into the Education Trust Fund. I believe that that is appropriate. We are required to have funds going into education which are assessed proportionately across the state, the general fund is that, and it is appropriate that some monies go in from the general fund to the Education Trust Fund. What I don't believe is that it is appropriate for monies that...taxes we increase, be taken from the Education Trust Fund to feed ourselves back to the general fund. I think it should be a one-way street. I think the monies should stay there for bad years. I think that we increased proportional taxes to go into education and that we shouldn't be constantly feeding ourselves back. And you know, the idea that it is an entitlement is appropriate, but I don't believe that that same entitlement is that the general fund could get paid back every time we have a need. We need to set what we believe is an adequate education, pay for it, and keep that Education Trust Fund where it belongs.

SENATOR GATSAS: Thank you. I agree with you Senator. However, would you believe that possibly that surplus comes because the general fund dollars are going in and the adequate education dollars are not coming in fast enough or maybe an accounting situation at the end, so there is a reimbursement of those dollars to the general fund?

SENATOR LARSEN: We set a budget and we fund education. We decide we are going to put \$60 million in. In my mind, you don't then decide, well, there is more money in there than they need, so let's feed ourselves back \$40...you know, let the general fund budget be \$45 million. We set \$60 million, we balanced our budget on it. Why are we paying ourselves back?

SENATOR GATSAS: I agree.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the ITL motion. I'd like to first say that I was involved when we started the education funding scheme. I don't remember the businesses and I don't remember the real estate industry coming in saying, "sure go ahead and tax us, it's a good deal." What I do remember is one certain organization who claimed to represent all those people, said to us, "oh sure, our members really want you to raise our taxes." Fortunately, they never took a poll of their membership, and after we did it, I know my phone never stopped ringing for weeks. But, we liken this bill to the Highway Fund and that is what scares me. I don't want it to be like the Highway Fund. Right now, we have the Highway Fund buying land, constitutionally protected money buying property that goes through the court process that ends up in the hands of the Fish and Game Department. We have a court system who takes approximately \$4 million. What's the nexus? Well, people have to go to court after getting caught speeding on the highways. Therefore, the courts entitled to highway funds. Well since the court's teaching us a lesson when we get caught speeding, wouldn't they then be entitled to education money? CACR just doesn't work. People will find a way to steal the money. There is always a nexus. There is always a way, as long as you have thirteen votes. It works now. We paid ourselves back what we had lent to the Education Fund. We lent it because it is an entitlement. Once we fulfilled our obligation, we gave back to the taxpayers for other use, the money that wasn't necessary. I would like to think personally, that that money went back to helping the elderly, helping the poor and helping the young. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. I would like to rise in support of the recommendation of the committee. My reason for doing that is not because of not thinking we could use more money in education, because I do believe that there are times when we can use more money. But I think the way the trust fund was set up, and the way I have dealt with it is, we know that revenues are going into that based on certain categories under the revenue side of the budget. We don't know, at the end of the day, how much money that is going to be for sure. And we appropriate the necessary money that we all agree on should be appropriated for those causes whatever they are. If we have a good year and there are more revenues going into that trust fund than we anticipated, then those funds revert back to the general fund. I think that is a great way to manage the finances of the state. I don't believe that you should set up dedicated fund systems that are just going to generate large sums of money with no commitment as to how they are going to be spent when you decided to that, and then let other people make the decision for us, how that money is going to be spent. **TAPE CHANGE** still needed for education, we should make that decision. We shouldn't leave that up to somebody else who is going to control a dedicated fund or automatically going to require that you spend the money. I don't mind spending the money if we have a good reason to spend it. But just to have it setting there, people know its there. The first instinct is "let's find a way to spend it." I don't think that is appropriate management for the state. I don't think it is good money management and I certainly don't think it is good tax policy in terms of the state. Thank you.

SENATOR LARSEN: Senator Green, what...can you tell us what the average cost of educating a child is in New Hampshire, being a ballpark figure?

SENATOR GREEN: Yes, I would say somewhere around eight million...eight thousand, I am sorry, eight thousand per student.

SENATOR LARSEN: And, further question. Can you tell us what is the per pupil adequacy grant that we fund a child at in New Hampshire?

SENATOR GREEN: Oh, about \$3,500 to \$3,380 I guess it was.

SENATOR LARSEN: So we are looking at a \$5,000 per pupil discrepancy between educating a child and what the state does.

SENATOR GREEN: Well, let's put it this way. The decision is whether the state, what the state's decision is, what portion of that adequacy we're going to fund. It is not a question of whether we think it is adequate in terms of the adequacy. We have to decide at a financial decision, what the state feels is an adequate contribution to that educational program.

SENATOR LARSEN: And, one further question. I think...would you agree that most people would say that \$3,000 per pupil is probably not adequate, but it has been what we have been able to pay for a given...the realities around here?

SENATOR GREEN: No. Not unless I agree that the entire cost of education should be borne by the state. If I agreed on that, then I might agree with you, but I don't believe the state should be bearing the entire 100 percent cost of an adequate education.

SENATOR LARSEN: How about 50 percent?

SENATOR GREEN: I am not going to debate with you. We could have that argument all day. I think we will decide collectively what we think that the percentage is, appropriately.

SENATOR LARSEN: Thank you.

SENATOR BURLING: Thank you, Mr. President. Since each of the benighted souls who were on the Committee of Conference that did this seven years ago or whatever it was, I am just going to say for the record, I was in the room, too, as the Democratic Leader of the House. I remember believing passionately that what we were doing was creating a fund that had a big one-way valve in it. That money went in and the only way it got out was for specific purposes that had to do with education. One thing we haven't discussed here is the relationship between the new in and out theory of this fund and the statewide property tax. You all know that I despise the statewide property tax and I am not too keen about property taxes in general. There is an argument to be made that, if money can flow in and out of the Education Trust Fund for the purposes of balancing the state general fund budget, then what we are doing is diverting statewide property taxes to the purposes of funding the general fund. That is not a proposition I would like to see us try and defend in a court of law. Thank you, Mr. President.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Fuller Clark.

Seconded by Senator Estabrook.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse.

The following Senators voted No: Burling, Gottesman, Foster, Larsen, Estabrook, Hassan, Fuller Clark.

Yeas: 17 - Nays: 7

Committee report of inexpedient to legislate is adopted.

SB 90-FN-A-L, relative to kindergarten construction aid. Finance Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 90 ought to pass. This bill extends the Kindergarten Construction Program, which has been an important initiative to leverage to encourage communities to start new kindergarten programs. Many towns have already taken advantage of this program and now there are only 11 towns left in the entire nation, all of them in New Hampshire, that do not offer public kindergarten. I would like to give credit to that statement to Senator Below, because when I read the notes from the debate last time, I just thought he did a great job. The bill allows the program to continue for another two years beyond 2005 with a very modest amount of funding to fund a few of the towns that have not yet adopted, another chance at kindergarten in the 75 percent support to build new facilities. The Finance Committee asks your support for the motion of ought to pass.

SENATOR ESTABROOK: Thank you, Mr. President. I just wanted to rise and show support for this measure and thank the sponsor for bringing it forward. It is great that this body is able to respond to the districts' needs. I hope that this will be an incentive to other districts that have not yet gotten on the kindergarten band wagon to know that this body will be responsive when the time arrives. Thank you.

SENATOR GREEN: I rise in support of the committee report. I recall all of the debate over this last year when we did away with the financing for those communities that did not want kindergarten. Our position

at that time was we are not against kindergarten, when they are ready and they want to do this, come back to us and we will support it. That is what this bill does. I will continue to do that. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, want to obviously, support the report, but echo Senator Green's remarks because I think we made a public statement that, if people wanted kindergarten, they could come back and we would look at it, and we would put it together. We are true to our word. I think that resonates very well with the public. Our public understands that we are here to support them and, when the need arises, we are there to take care of it. So thank you Mr. President.

SENATOR LETOURNEAU: Thank you, Mr. President. Representing Derry as one of the communities that doesn't have kindergarten yet, we have been wrestling with other school funding problems and other school building problems. I thank you for supporting us and keeping this there for when we are ready and able to do this so that it will be there. Thank you.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator D'Allesandro.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Boyce.

Yeas: 22 – Nays: 1

Adopted.

Ordered to third reading.

Senator Bragdon rule #42.

MOTION TO REMOVE FROM THE TABLE

Senator Boyce moved to take SB 29 off the table.

Adopted.

SB 29, relative to processing absentee ballots. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Boyce for the committee.

**Internal Affairs
January 24, 2005
2005-0064s
03/10**

Amendment to SB 29

Amend the bill by replacing all after the enacting clause with the following:

1 Processing Absentee Ballots. Amend RSA 659:49 to read as follows:
659:49 Processing Absentee Ballots.

I. Processing of previously received absentee ballots ~~[shall]~~ **may** begin ~~[at 1:00 p.m.]~~ **no earlier than one hour following the opening of the polls.** The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be

closed at any time during the processing of such ballots. Absentee ballots which are received [~~after 1:00 p.m. and prior~~] to 5:00 p.m. shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.

II. Notwithstanding the provisions of paragraph I, upon the written challenges of 10 or more voters who are present at the polls no later than [~~1:00 p.m.~~] **one hour following the opening of the polls**, the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election.

2 Announcement by Moderator. Amend RSA 659:50 to read as follows:
659:50 Announcement by Moderator.

I. The moderator shall begin processing absentee ballots by clearly announcing that he **or she** is about to open the envelopes which were delivered to [~~him~~] **the moderator**. The moderator shall then remove the affidavit envelope containing the ballots of each absentee voter and shall compare the signature on the affidavit envelope with the signature on the application for the ballot. If:

[I.] (a) The name of the voter is on the checklist; and

[H.] (b) The affidavit on the envelope appears to be properly executed;
and

[HH.] (c) The signature on the affidavit appears to be executed by the same person who signed the application; and

[IV.] (d) The signatures appear to be the signatures of a duly qualified voter who has not voted at the election; then the moderator shall publicly announce the name of the absentee voter.

II. If [~~these~~] **the conditions of paragraph I** are not met, the moderator shall follow the procedure provided in RSA 659:53. **If the conditions of paragraph I are met, the moderator shall then have a checkmark placed beside the name of the absentee voter on the checklist and write therewith the letters "A.V." in red ink. The ballot shall remain in the affidavit envelope subject to challenge until one hour prior to the time the polls are closed, at which time the affidavit envelope shall be opened and the ballot deposited in the ballot box, as provided in RSA 659:52, prior to the counting of the votes.**

3 Challenges. Amend RSA 659:51 to read as follows:

659:51 Challenges. All absentee ballots are subject to challenge after the moderator publicly announces the name of the absentee voter **until one hour prior to the time the polls are closed** but not after the ballot is removed from the envelope. A person who makes a challenge shall state the reason for the challenge. If the ballot is challenged, the moderator shall write on the affidavit envelope containing the ballot the word "challenged" and the name and address of the person who makes the challenge and the basis of the challenge. The moderator shall also number each challenged envelope consecutively by marking, for example, the first challenged ballot "Challenged Ballot No. 1". The moderator shall then determine if the challenge to the ballot is well grounded. If the moderator decides the challenge is well grounded, [~~he~~] **the moderator** shall not open the envelope but shall preserve it with the other ballots cast at the election as provided in RSA 659:101. **The moderator shall then have the word "challenged" placed beside the name of the absentee voter on the checklist in ink.** If the moderator decides that the challenge is not well grounded, [~~he~~] **the ballot shall remain in the affidavit envelope until one hour prior to the time the polls are closed at which time the moderator** shall open the affidavit envelope

so the affidavit thereon is not destroyed and proceed first to mark on the reverse of the folded ballot the corresponding challenge number as previously marked on the envelope. [He] *The moderator* shall then proceed to deposit the ballot as provided in RSA 659:52.

4 Opening Envelope; Depositing Ballot. Amend RSA 659:52 to read as follows:

659:52 Opening Envelope; Depositing Ballot. If the absentee ballot is not challenged, the moderator shall, ~~[after announcing the name of the voter]~~ *one hour prior to the time the polls are closed*, open the affidavit envelope containing the ballot so the affidavit on the envelope is not destroyed. [He] *The moderator* shall then take the ballot out of the envelope ~~[without unfolding the ballot or]~~ without permitting the ballot to be examined, and he *or she* shall preserve the affidavit envelope with the ballots cast at the election as provided in RSA 659:101. The moderator ~~[shall then have a checkmark placed beside the name of the absentee voter on the checklist and write therewith the letters "A.V." in red ink and]~~ shall then deposit the ballot in the ballot box.

5 Effective Date. This act shall take effect 60 days after its passage.

2005-0064s

AMENDED ANALYSIS

This bill modifies the timing of and procedures for processing and counting absentee ballots.

SENATOR BOYCE: Thank you, Mr. President. I just wanted to keep them in numerical order under the Internal Affairs. Thank you Mr. President. I move that Senate Bill 29 ought to pass with amendment. Senate Bill 29 modifies the process for counting absentee ballots on election day. The committee heard testimony stating the need for more time in which to process absentee ballots and thus reduce delays in vote counting. However, the Secretary of State expressed concern over the ability of citizens to challenge an absentee ballot if the bill went forward in its original form. The committee amendment seeks to balance the election officials' time versus the integrity of the voting process. The processing of ballots and the opening of the outer envelopes may now begin one hour after the opening of the polls. The inner envelope, however, cannot be opened or the ballot cast until one hour before the polls close. With this set up, the clerks will be able to get a head start on the process, but the right to challenge will be preserved. I would like to note that there is a typographical error in the amendment on line 8 & 9. It should read "which are received prior to 5 p.m." "Prior to" was left out of the amendment. So there is a floor amendment that will be following, which puts those two words back in, and also adds in some words that were recommended by some of the people from the committee. They pointed out that wording of "5 p.m." was ambiguous and we didn't know whether it was 5 p.m. the day before the election, 5 p.m. of the election day, 5 p.m. of next Thursday. So, the floor amendment will also put in the words "on election day." "On the day of the election." So, it would then read, "prior to 5 p.m. on the day of the election" clarifying that and allowing it to happen. So, if you will please support this amendment, we'll pass that and then we'll support the floor amendment I hope. Thank you.

SENATOR GREEN: Senator Boyce, thank you. The question I have basically is, has the Secretary of State weighed in on this amendment and the bill now?

SENATOR BOYCE: Yes. We actually made the amendment based on his recommendations.

SENATOR GREEN: Basically what he thinks is right?

SENATOR BOYCE: This is what we came to a conclusion while he was in the room that day.

SENATOR GREEN: Thank you very much.

SENATOR LARSEN: I sit on Internal Affairs and we reviewed this amendment and, at the time, there was not time to reach my own city clerk and think through this process. Because this bill has been on the table, we have had a chance to talk with various people about how this process would work. While it made sense to permit the opening of envelopes and attaching these envelopes to the affidavit envelope, to verify who's voting absentee. As I talked with my own city clerk, in a larger community such as Concord, the volume of absentee voting was so large in this last election that, although it would speed the process somewhat to zip open the envelopes and mark...and attach the affidavit envelope to that, the real issue was at what point would you be able to start putting the absentee vote in the ballot box. And, when talking with my clerk, she said that the biggest time-consuming part, I mean besides opening the envelope, is the volume of feeding into the machine large numbers of absentee ballots. After hearing that, I came to the conclusion and I hope some of you will, a majority of you will, that what is perhaps simpler, is to go back to the original version of Senate Bill 29, which permits the beginning of the process one hour after opening. It is very, very rare that an absentee voter comes in on the day of the election and says, whoops, I voted absentee but now I want to vote in person. It is a rare occasion. Most people who voted absentee remember that they voted absentee. The possibility for delay in having to count absentee voters and causing what is already hard difficulties to people working at the polls to get them to agree to stay late into the night while they feed these into the machines, makes me think that we need to support the original version of Senate Bill 29 and not the amendment. I rise to oppose the amendment.

SENATOR MORSE: Senator Larsen, wouldn't that go against what the Secretary of State was asking us to do, because I believe his concern was that, if you were to open and process them one hour after the polls open, and Manchester, I think, is six o'clock in the morning. That means at seven o'clock in the morning, anyone that stayed in town that day would not be able come back and vote, which was his major concern, and eliminate the ballot that they had cast already. That is why, I think, they proposed the amendment on this, to put the actual installing it at the end of the day.

SENATOR LARSEN: I heard that concern, but I also heard that it is very, very rare. Most people can't think of an instance where someone voted absentee and then is surprised to find themselves in town, and then is responsible enough to look up the law and say, "oops, I am here. I wasn't meant to be here. The law tells me I have to go in." It doesn't happen. So I think the importance is getting the vote counted and responsibly. I don't think there is any chance of fraud issues either.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, I rise opposed to the amendment and will offer an amendment to return us to the original piece of legislation with one change. The germination of this legislation came from the city clerks around the state. They contacted me. It was because of the significant number of absentee ballots. What I will propose is an optional situation. They don't have to do this. They may do this if they like and those city clerks who find, town clerks

who find that this is an acceptable practice, they may do it. Now, in looking over the situation that brought concern from the secretary of state. I have great admiration for the secretary of the state. I had him in Civics class, and he was only 13 years old at the time, so he has learned his lessons well. But it is a situation where the clerks run the elections in their communities and this allows them to be more efficient in how they process these ballots. I think, in referring to the job, they want to be the most efficient and effective as they can and we know that, in some situations, enormous lines were created in the last election. We are proud of that and very happy with that because we want a lot of people to vote. We certainly want everybody to vote that can. I think that the suggestion made by the clerks addresses that situation, not in total, but certainly in part. Thank you, Mr. President.

SENATOR FLANDERS: Thank you, Mr. President. I just...I don't have an opinion at the minute. I just want to remind everybody that I thought the purpose of this was for challenge. In Manchester, if you started opening your ballots and casting them at six o'clock in the morning or seven o'clock in the morning, it gives nobody a chance to challenge an absentee ballot. I thought that was one of the purposes we were waiting until...I agree, the times that somebody votes absentee and comes in and says, "I am in town, my mistake" are almost nil. I thought the purpose, if I understood, and I was there, that there is no time to challenge. If I may, now we have to list on the wall of the voting place, every name of every absentee voter, and what time we are going to open them, which gives the person a chance to come in and say, "well, I am not sure that Bob Flanders is qualified to vote." But if Bob Flanders' ballot gets opened up at seven o'clock in the morning and cast, and Ted comes in at noon and says, "I don't think..." too bad. So I am just...I don't care. But I think that has to be brought up. Thank you.

Amendment adopted.

Senator D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

February 8, 2005

2005-0228s

03/10

Floor Amendment to SB 29

Amend the bill by replacing all after the enacting clause with the following:

1 Processing Absentee Ballots. Amend RSA 659:49 to read as follows:
659:49 Processing Absentee Ballots.

I. Processing of previously received absentee ballots ~~shall~~ **may** begin ~~[at 1:00 p.m.]~~ **one hour following the opening of the polls.** The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time during the processing of such ballots. Absentee ballots which are received ~~[after 1:00 p.m. and]~~ **on the day of the election** shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.

II. Notwithstanding the provisions of paragraph I, upon the written challenges of 10 or more voters who are present at the polls no later than ~~[1:00 p.m.]~~ **one hour following the opening of the polls**, the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I offer a further amendment. Floor amendment 0228s and I ask that the clerk pass that out. Thank you, Mr. President. What our amendment does in terms of processing absentee ballots, we remove the "shall" to "may" and we say they "may begin one hour following the opening of the polls. Absentee ballots which are received prior to 5:00 p.m. on the day of the election shall be processed as soon as possible, and notwithstanding any other provisions, upon written challenges of ten or more voters who are present at the polls, no later than one hour following the opening of the polls, the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election." The key elements of this is "shall" goes to "may". It is one hour following the opening of the polls and it is prior to five p.m. on the day of the election. The last change is one hour following the opening of the polls on line 12 and 13 and I would hope that you would support this amendment.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro, I have a problem with "may" for the simple reason that I think that all towns and cities should have the same rules in place for something as important as an election. At the present time, as you go around, different towns do straight ticket balloting a different way even though it is in the law. So there is confusion there on straight tickets. So what do you think? Is that wrong, saying that I think it should be uniform throughout the state?

SENATOR D'ALLESANDRO: Well, I think you make an excellent point, Senator Barnes. We have tried, I think, throughout the course of history to get uniformity in the process. As a matter of fact, we went so far as to say we are going to have uniform polling hours. They have to be open for a period of...a certain period of time because I can remember during one of my elections when one of the towns that I represented, opened at eleven and closed at five. And all of those people working couldn't vote. So we now have uniform polling hours and your point is well taken. We would love to have uniformity. This gives the option to clerks to make a choice. I think that's the best that we can do at this point in time. It is in reaction to what the clerks have asked for.

SENATOR BARNES: Thank you, Senator.

SENATOR D'ALLESANDRO: You're very welcome Senator.

SENATOR LETOURNEAU: Thank you, Mr. President. My concern was the same as Senator Barnes'. I thought that we would try to keep our voting procedures and process uniform in the entire state. It would cause a lot of confusion, in my opinion, if we had different rules in different places. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. This is an internal thing. It is not, the voters don't even know it is happening, so it is not going to be anything that is going to confuse the voting. It is up to the moderator. For example, in Manchester, they're going to start opening them one hour probably. In Antrim, we're not going to. We have 35 or 40 absentee ballots and they testified that they have about 3,500 or something like that, so you have two different things. There is no need to opening it up in the small towns. We are going to continue to do exactly what we have done. Post it at 3 o'clock and we're going to open the absentee ballots. Most small towns will do exactly the same thing. This is to help the large towns and it has no affect on the small towns. Thank you.

SENATOR BOYCE: I just rise to point out that, in contrast to what the sponsor of this amendment has said, the amendment that we just passed does have the word "may". That doesn't change. It says, "it may begin no earlier than one hour following the opening of polls." So the only difference there is "no earlier than". The "may" is in both. So it is optional, as Senator Flanders mentioned, that the moderators can post a different time. Also, the rest of the bill allowing the challenge to continue up until one hour before the polls closing, I believe that is important and that would be eliminated by this bill. So the amendment we just passed, with the following floor amendment that I will propose, would make the changes needed. But the "may" is in the original amendment and would not be changed. I just wanted to point that out.

SENATOR BRAGDON: Thank you, Mr. President. Maybe just to speak, and after I speak, if I am wrong, then maybe I should have asked a question. But, I am opposed to this. I wasn't sure which one to do first, so we'll find out. Mr. Speaker, I am...Mr. President. I am so sorry. Wrong place. I am opposed to this because I feel it takes away the ability of the voters to challenge the absentee ballots. If the processing does start and is complete one hour after the opening of the polls, then people will not be allowed to challenge the absentee ballots. I think the Secretary of State's testimony was that would weaken our absentee ballot system. I agree with Senator Flanders. As I read this, it replaces the entire bill and eliminates what we had strove to put in there to allow the challenges to continue to absentee ballots up until an hour before the closing of the polls.

Floor amendment failed.

Senator Boyce offered a floor amendment.

Sen. Boyce, Dist. 4

Sen. Larsen, Dist. 15

Sen. Hassan, Dist. 23

February 8, 2005

2005-0227s

03/10

Floor Amendment to SB 29

Amend the bill by replacing section 1 with the following:

1 Processing Absentee Ballots. Amend RSA 659:49 to read as follows:
659:49 Processing Absentee Ballots.

I. Processing of previously received absentee ballots ~~[shall]~~ **may** begin ~~[at 1:00 p.m.]~~ **one hour following the opening of the polls**. The processing of the absentee ballots shall not unnecessarily interfere with normal voting procedures, nor shall the polls be closed at any time during the processing of such ballots. Absentee ballots which are received ~~[after 1:00 p.m. and]~~ prior to 5:00 p.m. **on the day of the election** shall be processed as soon after receipt as possible. Under no circumstances shall absentee ballots be counted prior to the closing of the polls.

II. Notwithstanding the provisions of paragraph I, upon the written challenges of 10 or more voters who are present at the polls no later than ~~[1:00 p.m.]~~ **one hour following the opening of the polls**, the moderator shall postpone the processing of all absentee ballots until after the polls close and prior to the counting of all ballots cast in the election.

SENATOR BOYCE: A floor amendment. I believe this one is number 227. The only changes in this are, as I pointed out before, the word "prior" was struck in the original amendment and was an inadvertent typo-

graphical error. And we added the words "on the day of the election." Those are the only changes in this amendment. So that is in lines eight and nine. It simply reinserts the word "prior" which was inadvertently struck and adds "on the day of the election." I ask that it be adopted. Thank you.

SENATOR BARNES: Thank you, Mr. President. This amendment is what I understood you to say the Secretary of State is happy with? What he figures is going to work?

SENATOR BOYCE: The amendment that we have already passed, he was happy with, except for the typo, which we found later and he will be happy with this.

SENATOR BARNES: So, if I'm voting for this, I'm voting for what the Secretary of State agrees to?

SENATOR BOYCE: Yes, we have already voted for what he agreed to and this was to correct it.

SENATOR BARNES: Reemphasis an oversight. Thank you.

SENATOR BOYCE: Thank you.

SENATOR FOSTER: Senator Boyce, this really is a question. What I am getting from my clerk in my city is, actually that he would prefer nothing be passed as opposed to this, because he doesn't feel it makes things any easier for them in the city. As I read this, it does seem like it creates sort of two-step process. You can start, but you can't really finish. You start the process and you can't finish. Under the current law now, can you sort of start and finish after one o'clock? You don't have the two-steps?

SENATOR BOYCE: Under the current law, what could happen...the current law is one o'clock I believe is the earliest. At one o'clock, they can start opening not only the outer envelope and verifying the signature and looking at challenges, they can also then take the inner envelope, remove the ballot, put the ballot in the ballot box, where it is then indistinguishable from every other ballot. So if there was...after one o'clock, if there was a challenge to that ballot, there is no way of preventing that ballot from being cast. What the amendment that we voted on earlier and what this continues in this amendment, is the process of allowing for that challenge to take place up until one hour before closing. That is the important...that was the real concern of the Secretary of State, and that is what it really addresses. If you open the ballots at one hour after the polls open or at some time after that, if you open them up and process that ballot all the way to the point where it goes into the ballot box, whether it is the machine where it is processed or into a box where it will later be counted. Whichever process that is, that ballot then is no longer identifiable as the ballot that might be challenged. So, to preserve that integrity for as long as possible, up until one hour before the polls close, that was the intent of this.

SENATOR FOSTER: Follow up, Mr. President? So just so I understand this and maybe so the body understands this, what we are now creating a system where, at the end of the election day, when the vote has been gotten on, and everybody has voted and so forth, the next thing that campaigns will do is send everybody over to Nashua at 7 p.m., our polls are open to 8, and start the challenge? Because that is what I would be allowing to occur in a sense, whereas now you have to do it, you would have to get there by one basically, under the current law, to be able to challenge. Is that fair to say that could be the undergrowth?

SENATOR BOYCE: If they got there at 7, they would be too late because that is one hour before.

SENATOR FOSTER: Six then.

SENATOR BOYCE: So if they got there at six o'clock or something and had a whole list of challenges, well that I suppose is possible. I don't see why somebody would wait that long in the process to challenge them. The purpose of the challenge is to let people in the community who believe that this person shouldn't be voting by absentee, they moved to Florida and they are living in Florida and they really don't reside here anymore, challenge that process. So that is what it is about. I don't believe that anybody is going to bring you know, somebody at the last minute to any polling place just to cause problems in the election. But you know, that is one of the difficulties we have in trying to keep the process fair to everyone. The process, to make it fair to the people that do need to make a challenge and desire to make a challenge, we need to make it fair to them, and we also need to make it fair to the person that is voting absentee. If it makes it a little more difficult for the moderators and clerks on that rare occasion when something like that happens, I suppose, you know, I would rather err on the side of making the business a little more difficult for a clerk or moderator rather than to disenfranchise either a voter or somebody who is challenging.

SENATOR FOSTER: Just one more follow up. So what I sort of have to decide is whether the community being able to challenge up until one o'clock is maybe enough or whether I want to put into place something where, at the end of a day when maybe campaigns have the time to sort of focus on the challenge process, they can kind of join in the effort?

SENATOR BOYCE: I believe you are right.

SENATOR FOSTER: Thank you.

SENATOR FLANDERS: Thank you, Mr. President. I'm confused. I'm not sure we're helping anyone here. I believe that this amendment says that the moderator shall postpone the processing of all absentee ballots until after the polls close. It doesn't say one hour before.

SENATOR BOYCE: Okay, where?

SENATOR FLANDERS: Twelve, thirteen and fourteen.

SENATOR BOYCE: Okay. That is on the written challenges of ten or more voters who are present at the polls no later than one hour following the opening of polls. So, if a group of ten people from the town said that they didn't want the moderator to start processing the absentees until the close of the polls, they can come within that first hour that the polls are open, ten of them have to be there, and say "no, we don't want you to process any absentee ballots until the end of the day, that is the way we want it." And the only change there is just the time that they had to be there. This is saying that, because they can start processing them one hour after, it is changing that from one o'clock to one hour after.

SENATOR FLANDERS: I'm talking about Manchester now, so Manchester please listen. You got 3,500 absentee votes. This says you can't start counting any of the votes until those are cast. I can see starting to cast votes one hour before seven and not counting your regular ballots. And

counting them until eight, nine or whatever. I am thinking out loud, if I may, Mr. President, why can't we open, allow the moderator to open the envelopes one hour after opening, with notice that he is going, he or she is going to cast the ballots at three o'clock? That way anybody can say yeah, I've got a challenge at three o'clock.

SENATOR GATSAS: All 3,600 ballots aren't in the same place. They are at different wards.

SENATOR BOYCE: I agree with you that that could be a problem. I am not actually sure why that paragraph, II, was in the original bill. The only thing that was changed in the amendment was to make it consistent with what we were changing in paragraph one. So, if you don't like paragraph II, we can always you know.

MOTION TO TABLE

Senator Morse moved to have SB 29 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 29, relative to processing absentee ballots.

Senator Johnson in the Chair.

SB 92-FN, relative to registering to vote. Internal Affairs Committee. Inexpedient to legislate, Vote 5-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move Senate Bill 92 be inexpedient to legislate. Senate Bill 92 would eliminate election day voter registration and domicile affidavits. The bill would also enact provisions of the National Voter Registration Act. In case anybody doesn't know what the National Voter Registration Act is, that is what's called "motor voter". The committee sympathizes with towns that have long lines and large numbers of people who want to register to vote on election day. However, the consequences of eliminating election day registration will be even more problematic for our state. Doing away with same day registration will remove our exemption from the requirements of the National Voter Registration Act and the Help America Vote Act and federal regulations will govern our process. These federal regulations will have cost implications for the state and will unnecessarily complicate our process with provisional voting and multiple registration locations. It also, the motor voter act is the one that allowed someone who was, I believe, a crack addict to be paid for registering people who didn't exist. Mickey Mouse and I don't know whoever the other characters were he registered. That was a direct result of the Motor Voter National Registration, National Voter Registration Act. I don't think New Hampshire wants to do that. Therefore, that is one reason for inexpedient. On the issue of domicile affidavits, the state must have some way to accommodate people who, for whatever reason, do not have the usual forms of identification. While we share the concerns about possible voting fraud, we cannot eliminate domicile affidavits without providing a viable alternative. In New Hampshire we register and vote in person at the town halls and polling places in our communities. The Internal Affairs Committee recommends that we continue to vote the New Hampshire way and not let federal regulators take over our process. Therefore, the committee asks you to support for the motion of inexpedient. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 136-L, relative to curbside voting at polling places by persons with disabilities. Internal Affairs Committee. Inexpedient to legislate, Vote 5-1. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 136 inexpedient to legislate. Though the bill is well intentioned, the Internal Affairs Committee heard testimony from Granite State Independent Living and the Governor's Commission on Disability indicating this bill would not advance the cause of increased access to polling places by the disabled. As a result, the committee recommends the Senate find this bill as inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 48-FN, relative to a prohibition on "peeping Toms." Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Clegg for the committee.

Senate Judiciary
February 8, 2005
2005-0236s
04/01

Amendment to SB 48-FN

Amend the title of the bill by replacing it with the following:

AN ACT prohibiting unlawful peering into the dwelling place of another.

Amend the bill by replacing section 1 with the following:

1 Breaches of Peace; Violation of Privacy. Amend RSA 644:9 to read as follows:

644:9 Violation of Privacy.

I. A person is guilty of a class A misdemeanor if such person unlawfully and without the consent of the persons entitled to privacy therein, installs or uses:

(a) Any device for the purpose of observing, photographing, recording, amplifying, broadcasting, or in any way transmitting images or sounds of the private body parts of a person including the genitalia, buttocks, or female breasts, or a person's body underneath that person's clothing; or

(b) In any private place, any device for the purpose of observing, photographing, recording, amplifying or broadcasting, or in any way transmitting images or sounds in such place; or

(c) Outside a private place, any device for the purpose of hearing, recording, amplifying, broadcasting, or in any way transmitting images or sounds originating in such place which would not ordinarily be audible or comprehensible outside such place.

II. As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance including public restrooms, locker rooms, or any place where a person's private body parts including genitalia, buttocks, or female breasts may be exposed.

III. A person is guilty of a class A misdemeanor if that person knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual activity" shall have the same meaning as in RSA 649-A:2.

IV. A person is guilty of a class B misdemeanor if such person unlawfully and without the consent of the persons entitled to privacy therein, peers through a window, door, or other simi-

lar opening into the interior of another person's dwelling place for the purpose of observing the private body parts of any person therein, including, but not limited to, the genitalia, buttocks, or female breasts of such person. Any person convicted of a second offense under this paragraph shall be guilty of a class A misdemeanor.

[IV] V. Paragraphs I [~~and~~], II, **and IV** shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel, nor are paragraphs I [~~and~~], II, **and IV** intended to limit employees of governmental agencies or other entities, public or private, who, in the course and scope of their employment and supported by articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law, or pattern of business practices adversely affecting the public health or safety.

2005-0236s

AMENDED ANALYSIS

This bill prohibits a person from peering through a window, door, or other similar opening into the interior of another person's dwelling place for the purpose of observing the private body parts of any person therein, including, but not limited to, the genitalia, buttocks, or female breasts of such person.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 48 ought to pass with amendment. Current law does not allow individuals who peer into private residences to be charged with anything more serious than a violation which creates no criminal record. The committee amendment places the new language in the violation of privacy statutes and provides a Class B misdemeanor charge in the first offense. Any second or subsequent conviction would be a Class A misdemeanor. These convictions would also create a record so that if an individual were a habitual offender, police officers and the courts could be aware of the repeated pattern of behavior. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 132, relative to the board of marital mediator certification. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary

February 9, 2005

2005-0245s

05/01

Amendment to SB 132

Amend the bill by replacing section 4 with the following:

4 Marital Mediators; Board Members; Reference to Judicial Branch Family Division and New Hampshire Conflict Resolution Association Added. Amend RSA 328-C:4, I to read as follows:

I. There shall be a board of marital mediator certification consisting of the following 9 members:

(a) One ~~[superior court]~~ judge *who regularly sits in the judicial branch family division*, appointed by the chief justice of the supreme court.

(b) One full-time marital master, appointed by the ~~[chief justice of the superior court]~~ *administrative judge of the judicial branch family division*.

(c) One attorney licensed to practice law in this state, appointed by the governor with the consent of the council.

(d) Two members of the public, appointed by the governor with the consent of the council.

(e) One mental health professional, appointed by the governor with the consent of the council.

(f) Three *certified* marital mediators, nominated by the New Hampshire ~~[Mediators]~~ *Conflict Resolution* Association and appointed by the governor with the consent of the council.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 132 ought to pass with amendment. Senate Bill 132 updates the statute governing the Board of Marital Mediator certification and parallels their current and proposed administrative rules. This statute was modeled after the recently-enacted Guardian Ad Litem Board statutes. The committee amendment merely changes the court language to make the statute consistent with changes that are occurring as the family division expands statewide. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 126, establishing a committee to study the appeals process in cases between landlords and tenants. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 126 ought to pass. Senate Bill 126 will create a study committee to review the eviction process in this state. Currently, if challenged all the way through the New Hampshire Supreme Court, an eviction process could take at least six months or more. A lengthy process could cause extremely adverse effects for the community around the dwelling and for the landlord. This committee will be charged with finding an alternative eviction process that is still fair to the tenant and the landlord. The Public and Municipal Affairs Committee supports this resolution and asks for your support. Thank you.

Adopted.

Ordered to third reading.

Senator Green is in opposition to SB 126.

Senator Eaton in the Chair.

SCR 3, relative to the Boy Scouts of America. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Public and Municipal Affairs
February 9, 2005
2005-0252s
01/10

Amendment to SCR 3

Amend the resolution by replacing the third and fourth paragraphs after the title with the following:

Whereas, the Boy Scouts of America have produced some of our strongest national leaders and role models, including, actor and war hero Brigadier General James Stewart, Nolan Ryan, President John F. Kennedy, Walter Cronkite, Bill Gates, Dan Jansen, and Mark Spitz; and

Whereas, Eagle Scouts including Astronaut James Lovell, Astronaut Neil Armstrong, President Gerald Ford, Sam Walton, John Tesh, Congressman Richard Gephardt, Congressman Thomas Foley, Senator Lamar Alexander, and Hank Aaron have gone on to prove that character does count, by living the Scout Law; and

Amend the resolution by replacing the second paragraph after the resolving clause with the following:

That copies of this resolution be sent by the senate clerk to the National Council of the Boy Scouts of America in Irving, Texas and the Daniel Webster Council, Boy Scouts of America in Manchester, New Hampshire.

SENATOR MARTEL: Thank you, Mr. President. I move SCR 3 ought to pass with amendment. This resolution gives credit to the Boy Scouts of America for helping to produce men of strong moral, mental and physical character with outstanding leadership skills. Many great Americans have been a part of the Boy Scouts, including President Kennedy and President Ford. This resolution recognizes their positive contributions to our society. The Public and Municipal Affairs Committee supports this resolution unanimously and asks for your support as well. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

SENATOR JOHNSON: Thank you, Mr. President. I just wanted to comment that I'm sure that most of you have the same experience I have. I have a lot of activity by the Boy Scouts in my district and I know that I have been invited to many of the Eagle Scout presentations and it is very impressive. I think we give the Boy Scouts of America a lot of credit for all of the work they do in the community and it has been a good experience for me. Thank you.

Ordered to third reading.

SB 85, relative to expenses of operating bingo games. Ways and Means Committee. Ought to pass with amendment, Vote 3-0. Senator Boyce for the committee.

Senate Ways and Means
February 10, 2005
2005-0261s
08/10

Amendment to SB 85

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Senior Citizens Bingo. RSA 287-E:11 is repealed and reenacted to read as follows:

287-E:11 Senior Citizens Bingo. Any senior citizens' organization in a city or town which has adopted RSA 287-E may conduct bingo games without a license under the following conditions:

I. The games of bingo shall be open only to persons 60 years of age or older.

II. The price to be paid for a single card or play shall not exceed \$.25.

III. All prizes, tokens, or awards used, given, offered, or awarded during or in connection with the conduct of any game or series of games conducted under this section in any calendar day shall not exceed the total value of \$150.

2005-0261s

AMENDED ANALYSIS

This bill allows a charitable organization to retain 7 percent of the amount collected from players in a winner take all game.

This bill also eliminates senior citizen special bingo licenses.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 85 ought to pass with amendment. The bill allows charities operating bingo games to retain 7% of the total amount collected on any winner-take-all game. Currently, the state receives 7% of the pot in tax revenue, the printer is paid for printing of the cards, the bingo hall is paid for the rental of the room, and the game winner receives the prize money and there is nothing left for the charity. Senate Bill 85 allows the charity to recoup some of the costs while 86% of the collections go to the winner in the winner take all games, and that will... The committee adopted an amendment that exempts the senior centers from the dollar a day license requirement for bingo games when the games are 25 cents per card or less and the total per day is \$150 per day or less. The committee recommends ought to pass with amendment on Senate Bill 85. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 17, relative to the definition of educational institution for the purpose of higher education loans.

SB 42, establishing a pharmaceutical study committee to study direct purchasing of prescription medication by the state.

SB 48-FN, prohibiting unlawful peering into the dwelling place of another.

SB 80, permitting the Emerald Lake village district to enact and enforce regulations to protect its public water supply and to have a health officer.

SB 85, relative to expenses of operating bingo games.

SB 90-FN-A-L, relative to kindergarten construction aid.

SB 126, establishing a committee to study the appeals process in cases between landlords and tenants.

SB 132, relative to the board of marital mediator certification.

SB 141-L, authorizing the establishment of certain reserve funds by the Gorham, Randolph, and Shelburne school districts.

SB 142, extending the reporting date of the commission to study issues relative to groundwater withdrawals.

SCR 1, endorsing a farm viability task force.

SCR 3, relative to the Boy Scouts of America.

ANNOUNCEMENTS

SENATOR BURLING (Rule #42): Thank you, Mr. President. I know we're going to do this more fully, but I can't let this... Bill Kidder died. And, if there is anyone in this room who doesn't know how much he offered to this state and how, what a huge contribution he made to the people in his district, I just would like to say we will miss him.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, receiving messages and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

INTRODUCTION OF SENATE BILLS

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate Bill numbered SB 224, shall be by this resolution read a first and second time by the therein listed title and referred to the therein designated committee.

Adopted.

First and Second Reading and Referral

05-1063

SB 224, relative to the committee on judicial conduct. (Foster, Dist 13: Judiciary)

Out of Recess.

HOUSE MESSAGE

The House of Representatives is ready to meet with the honorable Senate in Joint Convention for the purpose of attending to an address by Chief Justice John T. Broderick, Jr. on the state of Judiciary.

In recess for Joint Convention.

Out of recess.

RESOLUTION

Senate Clegg moved that the Senate recess to 10:00 a.m. on Thursday, February 24, 2005 for the purposes of introducing legislation and receiving messages and processing enrolled bill reports.

Adopted.

In recess.

Out of recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

February 24, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Under the heading of “don’t take yourself too seriously”, I came across something yesterday that reminded me of how quickly politicians can become irrelevant. And, I will have you know it is true for preachers and members of the media as well. I was reading over the minutes of a meeting held at St. Paul’s in 1866. It seems that in attempting to fill some of the less prestigious church offices, former President Franklin Pierce had been persuaded to stand for election as junior warden which, in case you don’t know, is a rather inglorious volunteer office in the church. The minutes record that President Pierce was ignominiously defeated on the first ballot. He didn’t even make it to round two. It was bad enough to get voted out of the White House, don’t you think? And, if it happened to him... So contribute your best efforts while you can, which is today because tomorrow you could lose an election for an office you don’t even want. Let us pray.

Great, kind, fierce and gentle one, teach us each to find our value in Your extravagant care for us, and not in any temporary positions of privilege, power or prestige. But when we are given them, let us spend those moments in deeds of humble self giving.

Amen

Senator Flanders led the Pledge of Allegiance.

Senator Burling is excused for the day.

INTRODUCTION OF GUESTS**COMMITTEE REPORTS**

SB 11-FN, extending the local property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Ought to pass, Vote 3-2. Senator Boyce for the committee.

SPECIAL ORDER

Senator Boyce moved that we Special Order the following Bill to the next session.

SB 11-FN, extending the local property tax exemption for wooden poles and conduits.

Adopted without objection.

SB 55, relative to the New Hampshire film and television commission and state promotional initiatives. Energy and Economic Development Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 55 ought to pass. Senate Bill 55 adds additional members to the New Hampshire Film and Television Commission and encourages the use of New Hampshire talent in state sponsored promotional initiatives. The committee heard testimony from Commissioner McLeod stating that the television and film industries bring revenue to local cities and towns in New Hampshire when they choose to work here. However, it is very important for people coming into New Hampshire who want to do business to understand the state's rules and regulations, and that is why it is essential for members of the police force and the legislature to be active on the commission. The Energy and Economic Development Committee voted unanimously in favor of Senate Bill 55 and the committee asks for your support. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 149-FN-A, relative to exemptions from the communications services tax. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 3-2. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 149 inexpedient to legislate. This bill would eliminate the communications services tax exemption on the first \$12 of each phone line's monthly bill. Though the sponsor pointed out this exemption intended to help citizens needing basic services applied to every phone line in a multi-line house, hardly the original intent of the exemption, the majority felt that increasing all phone bills 84 cents per line, per month, would adversely affect those same citizens needing basic services. As a result, the committee recommends the Senate find this bill inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 57, establishing a commission to study ways to alleviate medical malpractice premiums for high risk specialties. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

February 16, 2005

2005-0335s

01/10

Amendment to SB 57

Amend subparagraph I(a) of section 2 of the bill by replacing it with the following:

(a) Two members of the senate, appointed by the president of the senate.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 57 ought to pass with amendment. Medical malpractice premiums is an issue that has been discussed in this body numerous times. This bill would establish a commission to study ways to reduce premiums. The intention of the prime sponsor was not to have the commission examine the civil justice system, but to come up with the creative ideas to

alleviate the cost of premiums. The ED&A Committee unanimously asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 113-FN, relative to the use of federal funds for technology improvements within the department of employment security. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 113 ought to pass. This bill would allow the Department of Employment Security to assess up to \$11.9 million...and you can see the committee asked me to bring this forward because they all know that I am a big spender and nobody else wanted to do bring that \$11.9 up...to upgrade their computer system. Currently, the department is working with four different programs, which is time-consuming and delays the payment to claimants. The money is in an unemployment security trust fund, which has accrued over \$6 million from the one-time allocation from the Federal Unemployment Tax. The ED&A Committee asks your support for the motion of ought to pass. Thank you very much.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 153-FN, relative to the administration of certain programs by the department of environmental services. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Fuller Clark for the committee.

Senate Executive Departments and Administration

February 17, 2005

2005-0354s

06/09

Amendment to SB 153-FN

Amend the bill by deleting section 1 and renumbering the original sections 2-5 to read as 1-4, respectively.

Amend the bill by replacing section 1 with the following:

1 Department of Environmental Services; Chief Operations Officer Changed to Chief Financial Officer. Amend RSA 21-O:2, III-a to read as follows:

III-a. The commissioner shall nominate for appointment by the governor and council a chief [~~operations~~] **financial** officer of the commissioner's office who shall serve for a term of 4 years. The chief [~~operations~~] **financial** officer shall oversee and coordinate the activities of the administrative services, geology, public information and permitting, and laboratory services units, and shall be responsible for the following functions:

(a) Preparing agency budget requests.

(b) Developing and implementing procedures for assuring smooth operation of the various units within the commissioner's office.

(c) Ensuring compliance with directives and procedures by the governor and general court.

(d) Implementing audit recommendations concerning the commissioner's office units.

(e) Carrying out the directives of the commissioner and assistant commissioner.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I move Senate Bill 153 ought to pass with amendment. Section one changes the title of Chief Operations Officer to Chief Financial Officer. Section three transfers the lead paint poisoning licensing and certification back to the Department of Health and Human Services. The fees collected from the licenses are deposited into a fund appropriated by Health and Human Services and not the Department of Environmental Services. The amendment deleted lines 1-4 and lines 19 and 20 of the original bill because these two items were already addressed in Senate Bill 53, which was passed by this body a few weeks back. The ED&A Committee unanimously asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 165-FN, relative to the collection of tax debts from out-of-state debtors. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

February 16, 2005

2005-0334s

09/10

Amendment to SB 165-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to the collection of debts owed to the state.

Amend the bill by replacing all after the enacting clause with the following:

1 New Subdivision; The State and its Government; Treasurer and Accounts; Collection of Debts Due the State. Amend RSA 6 by inserting after section 43 the following new subdivision:

Collection of Debts Due the State

6:44 Collection of Public Debts by Collection Agencies or Law Firms.

I.(a) State agencies may retain, by written contract, private collection agencies or law firms for the purpose of collecting debts owed to a state agency by any person. The department of justice shall be responsible for the collection function for all state agencies. There is established in the department of justice a separate, nonlapsing account to be known as the debt recovery fund, into which all debts collected under this section shall be deposited. The department of justice may use the account for expenses associated with managing the collection function. Annually, funds deposited in the account, after all costs have been deducted, shall be credited proportionately to the accounts for which they were collected.

(b) Unless otherwise provided for by law, the amount of the collection fee and the terms and conditions of retention shall be negotiated by the department of justice and the private collection agency or law firm, subject to governor and council approval, and the requirements of this

subparagraph. The amount of the collection fee as negotiated between the department of justice and the private collection agency or law firm shall be added to the bill of costs to be paid by the debtor and shall not exceed 35 percent of the amount collected.

II. No debt may be assigned to a collection agency or law firm unless:

(a) There have been at least 3 documented attempts to notify the debtor of the existence of the debt and of the fact that the debt may be assigned to a collection agency or law firm for collection if it is not paid; and

(b) At least 30 days have elapsed from the last notice attempt.

III. Collection agencies or law firms assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors. The collection agencies or law firms are likewise bound by applicable laws governing unfair collection practices.

IV. For purposes of this section, a private collection agency or law firm shall cease its efforts designed to collect the debt and inform the department of justice and the agency upon the occurrence of any of the following:

(a) Direction from the department of justice.

(b) Bankruptcy of the account debtor.

(c) Determination by the private collection agency or law firm that the debt is non-collectible.

(d) Upon order of a court having jurisdiction over the debtor in a criminal or civil matter.

V. The attorney general shall submit an annual report, on or before June 30, to the speaker of the house of representatives, the president of the senate, and the chairperson of the house standing committee on executive departments and administration, relative to collection activity under this section. The report shall include, for each account: the relevant agency; the amount to be collected; the amount collected and whether it was collected by a collection agency, law firm, or court action initiated by the department of justice; any expenses incurred; and any amount outstanding.

VI. For purposes of this section, the term "debt" shall include fines and other debts, including the fee required under subparagraph I(b) of this section.

2 New Subparagraph; Debt Recovery Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (234) the following new subparagraph:

(235) Moneys deposited in the debt recovery fund, established under RSA 6:44.

3 Effective Date. This act shall take effect upon its passage.

2005-0334s

AMENDED ANALYSIS

This bill permits state agencies to retain private collection agencies or law firms to collect debts owed to the state. The bill directs the department of justice to deposit funds collected in a dedicated fund, known as the debt management fund, from which recovered funds shall be distributed annually to the appropriate agency. The bill also requires the department to submit an annual report on the collection activity to the legislature.

SENATOR KENNEY: Thank you, Mr. President. Senate Bill 165-FN was originally requested by the Department of Revenue was allowed to contract with private collection agencies. The amendment was requested that

you see in the calendar by the Civil Bureau of the Attorney General's Office. After further discussion between the commissioner of the Department of Revenue and the Civil Bureau's office, it has been asked to be withdrawn at this point. The Department's records regarding taxpayers are confidential, pursuant to RSA 21-J:14. Exceptions to this provision are limited in specific. Many are governed by the Internal Revenue Service requirements. Senate Bill 165-FN was drafted with those confidentiality provisions in mind. A standardized policy on state agency authority to contract with collection agencies or law firms will not meet the Department's particular requirements. The Department would be precluded from participation in the program contained in the committee amendment. So I would ask the body to defeat the amendment that was proposed in the Senate Calendar, and that I would offer an amendment thereafter. Thank you, Mr. President.

Amendment failed.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

February 24, 2005

2005-0459s

09/05

Floor Amendment to SB 165-FN

Amend the bill by replacing section 4 with the following:

4 Effective Date. This act shall take effect upon its passage.

SENATOR KENNEY: Thank you, Mr. President. Apparently there is about \$7 million, close to \$7 million of outstanding debt that will...this legislation is passed, will give the ability to the Department of Revenue to go out after once they have a contract with a private collection agency. This simple amendment is just asking that the bill be passed upon passage. That it take effect upon passage. So it is really a simple amendment that I would ask the Senate body to support. Thank you, Mr. President. Number, Mr. President, which is 0459.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 27-FN, relative to an exemption from the annual inspection of health facilities. Finance Committee. Ought to Pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 27 ought to pass. This bill develops a process for certain healthcare facilities to decrease the amount of inspections and to reduce the duplicative efforts on behalf of the Department of Health and Human Services. This legislation has no fiscal impact and, as a result, was voted ought to pass 6-0 in the Finance Committee and we ask for your support.

Adopted.

Ordered to third reading.

SB 109-FN, relative to catastrophic special education funding. Finance Committee. Inexpedient to Legislate, Vote 5-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 109 be inexpedient to legislate. This legislation requires that the state fully fund catastrophic aid costs. Current statute says that if there are insufficient funds, the costs will be prorated prior to reimbursement. This bill would eliminate language requiring that funds be prorated in the event there are insufficient funds. The committee carefully considered this legislation but felt that the proper place to have this discussion on fully funding catastrophic aid is during the debate on the budget. This is good fiscal policy as it provides a more complete picture of the expenses of the general funds. Please support the committee recommendation of inexpedient to legislate. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I rise in opposition to the committee's report of ITL. SB 109 is a simple bill calling for full funding of the state's obligation for catastrophic special education aid as state policy. It removes existing statutory language which calls for aid to be pro-rated based on budgeted funds. This language is especially significant this year as the Department of Education projects districts will not receive full reimbursement of catastrophic costs, but rather, just under seventy cents on the dollar. One of my local districts called this to my attention and all statewide are concerned. It would be difficult, I'm sure, to find members of this body who have not called repeatedly for the federal government to live up to its obligation for special education funding. We decry the feds for passing these costs down to us. It seems the consistent position for each of us would be to have the state live up to its obligation for special education funding, not pass these costs down to the local level. The whole purpose of having a statutory ceiling for costs at the local level, three and a half times the average pupil cost, about \$28,000, is to adopt a policy of spreading financial risk for the most expensive students statewide. I say we should live up to that policy. I ask Senators to vote no on the ITL so I may bring forward a floor amendment and an ought to pass motion. The amendment speaks to a point raised in hearing that any federal, through Medicaid or otherwise, or other non-state aid received by a district to reimburse for special education costs, will be deducted from state aid. A clarification against double dipping, and another reason to overturn the ITL and vote ought to pass. Next time each of you calls for full federal funding of special education, remember SB 109 and how you chose to vote on full state funding of special education, and I would request a roll call.

SENATOR GREEN: Thank you, Mr. President. I would like to rise in opposition to the ought to pass motion. I'm sorry, the inexpedient to legislate motion. That motion indicates to me that, if we kill this bill, there is a question of whether or not we will even consider it in the budget since it has been the position of the Senate to kill the concept of fully funding special education. I think catastrophic aid is one of those areas where the state of New Hampshire has an obligation. We are always wrestling with how to pay for these things, but this is one area where we have said that we are responsible. We will pay for it. The pro-rating issue causes a major, major problem for the local school districts because it is probably the most costly service that they have to provide and it leaves us in a position of saying we support this, but we're not willing to fund it. I think it is inappropriate for us as a Senate, to send that message both to the handicapped community and the special ed community, as well as the local school districts. So I would urge the members of the Senate to vote against the ITL and let Senator Estabrook offer her amendment, which I think is consistent with what we're trying to do to

make sure that we aren't...people aren't getting paid twice for the same services. That is why I am supporting this effort and I do believe that, as an educator, I believe strongly of course, as many of you know, in funding special education. Thank you.

SENATOR BARNES: No, Mr. President, it is a question of Senator Boyce. Senator Boyce, it is my understanding that this is already in the Governor's budget. Is that correct?

SENATOR BOYCE: I am not aware if it is or not. I haven't seen that part of the budget.

SENATOR BARNES: Maybe the chairman of the Finance...

SENATOR EATON (In the Chair): He has not spoken yet, but we might be able to answer that as we go along.

SENATOR BARNES: Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. It is my understanding that the Governor has indicated an intent to fully fund catastrophic aid. But this important legislation clarifies some other issues, which is that, under current law, the state is permitted to pro-rate over the years, to comp. This passing the original...passing Senate Bill 109 with the amendment would say that we believe that special education funding should in fact be fully funded, not pro-rated. It would clarify that, if a school district was reimbursed for say a child receiving Medicaid funds, that the double effect of payment from the state and payment from the federal government would not occur. So in fact, it is a fiscally responsible as well as morally responsible bill to pass in that we all believe that, when a child receives or needs such special education, that their costs exceed three and a half times the average, that it is in fact a state responsibility to help pick up some of that cost relief. The local, the randomness of where that child happens to live and accept that it is a state responsibility to educate children and to bring them up to their highest potential. So I urge you to defeat the inexpedient to legislate and to consider the floor amendment to come as corrective legislation indicating what the state believes, which is that we have a responsibility to special education and not to pass it down to local property taxpayers.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the inexpedient motion and say that, having been a member of the school board in my local community, I see these costs. These costs are enormous. They are expanding every day. It seems to me though, the only way to present good public policy is to do something at the local level that clearly indicates that we are willing to go the full mile. That should give a message to the United States Congress that they ought to go the full mile in terms of what they have mandated to us and funded up to the forty percent level. I mean, that makes a lot of sense. Fulfilling obligations is what we're here for. The obligation of the federal government has been met sometimes nine percent, sometimes ten percent, to a maximum of thirteen percent. It seems to me that, if education is one of the priorities, we're talking about no child left behind. We're talking about enormous changes in education, and how we handle education, and yet the federal government never fulfilled its obligation of the up to forty percent. This makes a statement that we are willing to go via the public policy route to the maximum extent and we say, or we will say with Senator Estabrook's amendment, that any dollars that we receive from the federal government as an offset will be used as an offset and we won't be double dipping. I mean that is a fair statement. That is a fair

assessment, and you are living up to a responsibility. But, unless that message gets clear, and we have broad representation in the Congress of the United States. A Senator from New Hampshire is chairman of the Budget Committee. Now what better message can we give that person, former Governor of New Hampshire, former Congressman, now Chairman of the Budget Committee in the Senate that we would like that forty percent? We are entitled to it. Many in this chamber have been on school boards. Sit on schools to this day. They know what the costs are. So I think we ought to send that message and, when the amendment is offered, vote for it. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I also believe that catastrophic aid is something that we need to address, have needed to address for a while. We can no longer overlook this and catastrophic aid is really a major problem, especially in the larger cities in the state. It is a statewide issue as well. I understand that this is supposedly in the Governor's budget and this is a good idea if it is. I am not quite sure of that though, but I certainly do support catastrophic aid and I ask... I thank you, Mr. President, for giving me the time to speak on that.

SENATOR GATSAS: Thank you, Mr. President. I rise in opposition to the ITL motion. Special education costs in the state of New Hampshire is \$418 million. Eight million dollars is exchanged between communities when those children move from one community to another. There is roughly another \$73 million between catastrophic aid, IDA money that goes directly to the communities and IDA that is funneled through the state. We have an education funding formula that we put in place last year that eliminated special education costs one hundred percent. I don't think that any of us should sit here and talk about special education without at least thinking about the catastrophic aid. There is nothing that says we have to fund even one dollar in that budget. We eliminated special education funding costs from the education budget from the formula. There is nothing that says that we couldn't eliminate one hundred percent of catastrophic aid from this budget. Thank you, Mr. President.

SENATOR HASSAN: I also rise in opposition, Mr. President, to the ITL. I support and appreciate the comments of my many colleagues who have talked about our obligations as a state, the message that we are sending to the federal government about their obligations, and I fully support those comments. I also want to speak on behalf of the families and children who need the catastrophic aid and our school districts that need it. I am deeply aware that every member of this body supports people with disabilities in their communities, supports the efforts that this state has led to integrate people with disabilities back into their communities, closing the Laconia school for instance. I applaud those efforts. I do want to remind this body that one of the effects of under-funding of special education at the local level is not just budgetary, but is in fact an issue of an additional stigma on children with severe disabilities. It is a rare child who costs over three and a half times the average per pupil costs who is not already noticeable in the community, and who does not already have to deal with the issues of being different. In my view, the failure to fully fund catastrophic aid puts an additional stigma on children, which is that of a price tag. While I know my neighbors in Exeter and elsewhere in this state, do everything they can to try to ignore that, we need to do everything we can to integrate people with disabilities fully into our communities, and fully funding catastrophic aid is a step in that direction. Thank you, Mr. President.

SENATOR LARSEN: Senator Hassan, are you aware...maybe a few years back, I had the Legislative Budget Office review and add in inflationary costs if Laconia State School was still open. And at that time which was...the calculation was done perhaps as many as five or six years ago. The state would be spending over \$100 million just to operate the Laconia State School. When you look at the fiscal note on Senate Bill 109 and see that it is in the \$31-\$32 million range, are you aware that there is this kind of financial discrepancy that is in fact picked up by the locals and by parents who now give better care in their community? Were you aware of those numbers?

SENATOR HASSAN: I am aware of those general numbers and I thank Senator Larsen for bringing them to this body's attention. It is very true that the efforts of the local school districts and the communities to support the severely disabled in their communities are cost effective as well as morally right. And, the other thing I would note is many communities in the state of New Hampshire are doing their best to insure that they maximize federal funding through, for instance, Medicaid match, for some of the services that are provided that could be characterized as medical. So I thank Senator Larsen for her comments and that is a discrepancy that it is very real.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the ITL. I am a member of the Finance Committee. Are we going to legislate every piece of the budget or are we going to look at the budget, as we always have, as one unit? What exactly is "fully funding catastrophic aid"? Well, I guess you don't know until the end of the year how much money you need. That is why sometimes we run out. So do we just leave a line in the budget that says, "whatever"? What's our bottom line? How do we know? Now I heard how we passed a bill last year, that took out special education funding. This year we are looking at an education plan that abandons every single child in my district. So I don't think that is what we're looking at. I think we're looking at a budget process. How much money do we have? Where do we want to put it? And what are we going to do with it? Not this budget is going to stay wide open. Maybe it is \$30 million. Maybe it's \$60 million. I don't know where we get the money once we start doing that. The Finance Committee said that they want to make sure that catastrophic aid is funded at 100 percent. One hundred percent of the cost that we know. But we shouldn't debate line by line in here, under special legislation, the budget. We should wait and bring forth all the concerns you have when the budget hits the Finance Committee in the Senate. And, we have a thing that we always call a trailer bill which takes care of the Senator's amendment that says that people can't double dip. I will be first one to stand behind that because that was part of the problem with the last education formula, double and triple dipping. We want to make sure in cat aid they don't double and triple dip. Somebody made the statement that by ITLing this, maybe we wouldn't be able to look at it in the budget. But if you listen to the reason why the Finance Committee said no, we said no because we believe it is part of the budget and shouldn't be handled separately. All we're asking everyone is to be patient. Look at the budget, look at the needs, and look at them together. See what we have, see what we need to raise to meet all our obligations and all our wants, but let's go slow. Let's not pick the budget off one line at a time without knowing what the consequences are going to be. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. I hear what Senator Clegg is saying and, in most cases, I would concur with you, but this is one of those special areas. I don't mean to be using the words of "special education" is a "special areas", but it is a very special area. We, as a Senate, should give direction to the Finance Committee now, that this is a priority for this body. And that we are not going to deal with the whole issue of how the budget is going to deal with it because, if you make a commitment, the Finance Committee will have a position of the Senate, which is what you should go in on this particular subject matter with. And I do reemphasize, if you vote against this, this leaves the door open during negotiations, either among ourselves and the House, that in fact the Senate's position is to not fully fund special education. You can still negotiate about special education, but I think that we ought to negotiate from a position of strength, that the position of the Senate is that we intend to fully fund special education. Now, I also know that it is in the Governor's budget on catastrophic aid. But let me also tell you, I know, as many of us know, that that doesn't mean that budget is going to pass. So here is our opportunity right now to take a deep breath and say "do I believe, as an individual Senator, that special education is so important that it shouldn't be wrapped up in the consequences of negotiations, wrapped up in the consequences of what happens of the budget of the Governor." This is our decision, nobody else's. What do we want to do as a body? And I would ask you to oppose the position of ITL on this particular legislation. It is too critical to ignore. Be on record now. It is so important for us as a Senate to take a position. This is a Senate position. It is not a House position, it is not a governor's position. It is our position. And the public is going to want to hear what we feel about this particular very, very important area of the budget. Thank you very much.

Recess.

Out of recess.

MOTION TO TABLE

Senator Clegg moved to have SB 109-FN laid on the table.

Adopted.

LAIID ON THE TABLE

SB 109-FN, relative to catastrophic special education funding.

SB 137-FN-A, relative to the Conway Branch railroad and making an appropriation therefor. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Morse for the committee.

Senate Finance
February 17, 2005
2005-0324s
06/01

Amendment to SB 137-FN-A

Amend the title of the bill by replacing it with the following:

AN ACT relative to the Conway Branch railroad.

Amend the bill by replacing all after the enacting clause with the following:

1 Conway Branch Railroad; Study of Federal Funds Availability. The department of transportation shall research the availability of federal funds to fund the rehabilitation tasks as outlined in the report of the Conway Branch railroad line feasibility study that was conducted pur-

suant to 2003, 298:4 on the state-owned portion of the Conway Branch rail line. The department may consult with other state and federal agencies, the regional planning agencies, the New Hampshire congressional delegation, and other interested parties. The department shall report the results of the study to the president of the senate, the speaker of the house of representatives, and the governor on or before June 30, 2006.

2 Effective Date. This act shall take effect upon its passage.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 137 ought to pass with amendment. The amendment brought forth by Senator Kenney replaces the bill and requires the Department of Transportation to research available federal funding to rehabilitate the Conway Branch rail line. This bill has no fiscal impact and, as a result, we voted ought to pass with amendment 6-0 by the Finance Committee, and we ask for your support.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 162-FN-A, increasing the appropriation to the firemen's relief fund. Finance Committee. Inexpedient to Legislate, Vote 5-1. Senator Clegg for the committee.

MOTION TO TABLE

Senator Clegg moved to have SB 162-FN-A laid on the table.

Adopted.

LAID ON THE TABLE

SB 162-FN-A, increasing the appropriation to the firemen's relief fund.

SB 14, relative to special school district meetings to vote on tuition contracts. Internal Affairs Committee. Inexpedient to Legislate, Vote 4-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move Senate Bill 14 be inexpedient to legislate. Senate Bill 14 exempts tuition contract votes at special meetings from the requirements that voter turnout equal at least 50 percent of the number of voters at the previous regular meeting. While the committee sympathizes with towns trying to get tuition contracts passed, this legislation is not necessary. Any town can go to a judge for an emergency ruling and the 50 percent rule does not apply. The process of going to a judge for an emergency ruling is an important check on special town meetings and that process should not be undermined in this way. The Internal Affairs Committee asks you to support the motion of inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 26, requiring identification to obtain a ballot. Internal Affairs Committee. Ought to Pass, Vote 3-2. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 26 ought to pass. This bill would require voters to show a driver's license or other form of ID in order to obtain a ballot. More than 20 states have provisions either requiring that IDs be shown or allowing for it. The committee feels this bill provides an extra measure of security for our voting process and recommends SB 26 ought to pass.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, I rise in opposition to the ought to pass motion. We encourage people to vote. We want people to get out. We want people to vote. We have a registration process. We go through that registration process. We have a same day registration process. We have people at the polls who check the materials brought forth. There has been, you know, very little, if any, indications of voter fraud in the state of New Hampshire, yet you're asking a person to provide a picture ID before they can vote. Now, I think that's going a little overboard. Most of us who go to the polls have been going there for a period of time. And you mean that someone is going to deny me the right to vote because I left my license at home. I didn't happen to bring it with me that day. I left it some other place. I just find that to be a detriment to voting. **TAPE CHANGE** of getting people out to vote. Our whole initiative has been to get people to vote; to make it as easy to vote as possible. Now, as I said, when I first started in this business, you had to bring your passport or your birth certificate to register to vote. How many people in this room walk around with their birth certificate or their passport in their pocket? That is how you had to register to vote in some of the towns that I represented some thirty years ago. Well we did away with that. This, to me, is a return to that methodology. Producing a picture in order to get the right to vote. What if the picture doesn't look like you? You know, I think some of us complain about the pictures that are taken, particularly by the Department of Safety. It probably isn't our best picture. They could say that they could reject us based on that fact. How many of you have had a passport photo taken that really doesn't look exactly like you? This is...this is a return to the process of really withholding an opportunity to participate. I strongly oppose this. Thank you, Mr. President.

SENATOR LARSEN: I also rise to strongly oppose passage of Senate Bill 26. I rise for two reasons. First, process-wise, the Committee on Internal Affairs on which I sit, if you...we have a system right now where, if you have a tie vote, someone's supposed to leave the room. It happened that I arrived in time to...I could have asked for the committee to register my vote and it would have been a tie vote. So I think everyone in this room ought to ignore the ought to pass motion, because truly, that committee of six had a 3-3 vote, if I had been permitted to cast a vote. We have a problem with our system of how we vote in committees and we need to look at those rules. But we also create a problem with a very basic right. The right of people to vote. Free and fair elections. This bill, which even the sponsor came in and said needed an amendment, the Secretary of State came in and said this bill goes to an extreme, and that is documented in the hearing report. This bill creates an obstacle to voting. It creates an obstacle for older people who might not have their driver's license. It creates an obstacle for people who might have forgotten to bring a photo ID or didn't even know that they were supposed to. It creates an obstacle on a busy election day when you get up to the line and all of a sudden they say "oops, you don't have the right ID,. Go back home and get the right stuff, get back in line." You might miss voting. It creates a problem for young people who might not have their driver's license yet. Maybe they don't have a passport. Last I checked, and maybe it's not true anymore, but even those photo IDs from the state used to cost \$15 and you had to go over and stand in line as if you were getting a driver's license. We heard from the clerk, the Nashua Clerk, that the proper place, and I agreed with him, the proper place to look at people's identification is when they are registering to

vote at their town hall. It's...to do that on election day will cause tremendous backup. We have a system of affidavits. We have a system by which people swear and sign a document. I believe that that is the way we should continue. This bill was not...was...we were told we were going to get an amendment to it and it would be fixed. We did not get any amendment. We were told by the Secretary of State that it goes to extremes. It still goes to extremes. I urge you not to pass Senate Bill 26 and ask for a roll call, Mr. President.

SENATOR FULLER CLARK: Senator Larsen, is it not true that when this bill was heard that what was discussed by the sponsor was his intention to streamline the process and to do away with the long lines that were occurring because we had had such a, you know, a wonderful turnout in the past election? And would you be able to comment on actually if this requirement which I see actually gets in the way of people being able to vote, would do anything to streamline the process?

SENATOR LARSEN: You're correct. The sponsor did come and said it was his best intention to make the voting process smoother and that we should be working on an amendment. We didn't amend this bill, it's still the same problem bill that so many people addressed at the hearing.

SENATOR FOSTER: Senator Larsen, I wonder if you can help me? I am reading the committee report and the sponsor indicated reasons that he felt it would be helpful to have registration and voter ID with registration. But I am looking at the rest of the people who spoke, our assistant Secretary of State, Paul Bergeron, the clerks, and I don't see anybody who unqualifiedly supported the piece of legislation as written, so I assume there must have been somebody and the committee report is missing something. I wonder if you could help me with that?

SENATOR LARSEN: I think that there was mostly qualified testimony. It's possible, it's possible that one of the members listed in supporting the bill came and said it was a great idea. But my recollection was everyone who was intimately involved with this, either the bill's sponsor or the Secretary of State or the clerks, all said that this bill was not wise to pass and that it needed an amendment if we were going to do anything, changing the way we register voters or include voters on election day.

SENATOR FOSTER: Thank you.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I rise in opposition to ought to pass. I am speaking personally as well as the moderator. I'd like to tell you a story that what I think will happen in some of these towns. I will use my wife as an example. If we have a big turnout like we have had in the past, most of the lines in these town halls are short and they go outside and, in February, it can be pretty cold, it can be snowing and so forth. That is exactly what is going to happen. My wife is going to get up to the ballot inspector and they are going to say "may I have some ID"? She is going to open up this thing she carries and she is going to say "oh my God" and she is going to dump the whole thing on the table and she is going to say, "Oh, did you see the latest picture they took of Bob down in Concord and the picture of our dog?" And, down on the bottom she may find her license. She'll have it. The gentleman over here, Mr. Richards, is the moderator in Concord. He has been the moderator over 30 years. In fact, he is moderator in Ward 4 where this building sets. He told me he said, "Stand up just as loud as you possibly can and defeat this ought to pass" because he said,

"in Concord, it is ridiculous" and, in Antrim it is ridiculous. I think that if Senator Burling was here today, you would have another moderator. So it just doesn't work. Now let me give you my history of the bill. When we heard this, the original intent of this bill was to show ID to register. That is exactly what the sponsor wanted to happen. There was a mistake then, and it is a mistake today. But the sponsors said let it go. This is not the intent of the original bill. It is just a mistake. It ought to be defeated. Thank you very much.

SENATOR CLEGG: Senator Flanders, last year in Londonderry there was a 17-year-old boy who went and voted using his father's name. If this law had been in place, would he have been able to do that?

SENATOR FLANDERS: Probably not unless he looked like his dad.

SENATOR CLEGG: Wouldn't his license have shown that he wasn't of age to vote?

SENATOR FLANDERS: To answer you in an evasive way, if you've got a line going outside, these ballot inspectors are not going to memorize these licenses because they are not going to have time. When we are under pressure with a line and the booths are full and the ballot...they'll look at because the law says they have to, but they are not going to memorize it.

SENATOR CLEGG: I am sorry. I didn't understand the memorize part? Where in the bill...

SENATOR FLANDERS: They are not going to look at the whole thing. They are going to look at it and carry on because they are busy.

SENATOR CLEGG: So, in other words, no matter what we do, the ballot clerks aren't going to bother to check to see if somebody's a valid voter?

SENATOR FLANDERS: That would be my opinion. They are not going to have the time to do it.

SENATOR CLEGG: Oh, I see. So, the problem is logic.

SENATOR BOYCE: Senator Bragdon, I just want to refresh my memory on some of the things that are necessary to show a photo ID. If I go to the store and show my credit card and I haven't signed the back or if it is like mine where it is worn off from going through too many machines, I use it too much, the signature is not there, they ask for a photo ID. If I go to cash a bank...cash a check at my bank, even though they know me, they ask for a photo ID. If I go to the airport and want to get on a plane, they ask for a photo ID. If I go to the Greyhound bus and ask to get on their bus, they ask for a photo ID. If I drive my car, I have to have a my driver's license with my photo ID. Those are all things that don't really necessarily come to the importance of voting in my opinion. Those all require a photo ID, don't they?

SENATOR BRAGDON: Yes Senator, I believe that anything in our society that we put a high value on security on requires an ID.

SENATOR BOYCE: Thank you.

SENATOR KENNEY: Not to speak. Just for a question of Senator Bragdon, if I may. Senator Bragdon, more of a technical question. When I would call my town clerk's office and I wanted an absentee ballot, they would send me out an application for an absentee ballot. So I would fill out that application and I would mail it in to the town hall and then my absentee

ballot would come back to me. Nowhere in that process, under this bill would I have to produce a photo ID unless I am missing something or unless there is a requirement under this legislation to show a photo ID when I ask for an absentee ballot.

SENATOR BRAGDON: My understanding, Senator, this only applies to obtaining a ballot at the polls on voting day.

SENATOR KENNEY: This is strictly for voting day?

SENATOR BRAGDON: That is my understanding.

SENATOR KENNEY: Then, can I ask you another question? Why would it be any different for a voter who is voting absentee ballot not to provide an photo ID than on voting day?

SENATOR BRAGDON: I believe one thing may be, Senator, the time involved in order to be able to check up and see if these things are happening. If it is voting day, there is no time to follow up.

SENATOR KENNEY: Thank you.

SENATOR MORSE: Senator Bragdon, would you believe that on absentee ballots, we actually check signatures, and that is how we challenge some of the absentee ballots?

SENATOR BRAGDON: I would believe that Senator, yes.

SENATOR JOHNSON: Senator Bragdon, if I am reading this correctly, doesn't this only occur, the additional identification, if the address is not correct that is given?

SENATOR BRAGDON: I believe the purpose, Senator, is to require a photo ID and not necessarily to check the address.

SENATOR JOHNSON: Thank you.

MOTION TO TABLE

Senator Foster moved to have SB 26 laid on the table.

Motion failed.

SENATOR MORSE: Thank you, Mr. President. The state of New Hampshire, while we all want to believe we are staying smaller, and my town has only grown by 2 percent and I am considered one of the largest towns in the state. It has been growing by 2 percent for the past 20 years. But, the fact is, during these last couple of elections and I am the town moderator, that I saw...I didn't know three quarters of the people and maybe more that came in to vote. And I called other Senators during the process. I said what is going on? I don't know these people. It is not like my old home town where I waved to everybody that was driving down the street. I think things are changing. I think it is important to put this kind of legislation in. I just don't believe that, if there is a sign that says your ID has to be there, that when you're number 15 or 20 in line, 'cause we did have lines this time, you're not going to prepare for that. I just can't see how that is going to happen. I really believe you need this. I have questioned all along how somebody like this Londonderry incident. I was with that young boy and it just so happens it comes out in the paper the next week and I said, this is incredible that this could happen. Well intended on his part, but wrong. I think it could happen in other cases. I think you really need to put legislation like this in. As you may want to claim you all have small towns, but town clerks cannot tell you everybody in your town anymore. It is just not like that anymore. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I'm from the largest city in the state. I don't know everybody in the city of Manchester. Contrary to popular belief, I have not taught everybody in the city of Manchester or had them as a classmate, but I'll tell you this. Last, last session we passed an affidavit law. You have to sign an affidavit when you register to vote. If you fill it out and it is wrong, a thousand dollar fine, a year imprisonment. Not bad. Huh? Not bad. A thousand dollar fine, a year imprisonment. It seems to me that if we want to continue to discourage voter participation, the next thing is saliva tests. The next thing is blood tests. Now come on. We want to encourage people to vote. We want to encourage people to vote. It seems to me that we have covered how many items. They now...when I went into the polls in Manchester, it was not only Lou D'Allesandro scratch off your name, but where do you live? I had to give my address, 332 St. James Ave. I have voted at those polls for 40 years. I give my name, give my address. What are they going to ask me next for? Your picture? What if the picture isn't any good? What are they going to ask me for next? I mean what is this? Where are we going with this? We have good citizens. We've got to get back to teaching them civics. We've got to get back to teaching them civics. Won't have any 17 year olds doing that if they take that civics course, I'll tell you that. But come on, I think let's get very serious. We have precautions around our polls. I think our polls do a good job. What happened last time? We succeeded. We had the greatest turnout in the history of the state. We had the greatest turnout in the history of the state. We encouraged it. We want people to vote. We put more registers online because we wanted people to vote. And it does get cold on a November day. And, if that line is long, and I remember those lines, Senator Morse, when a cop used to stand behind the last person in the black of night when it was freezing cold, and you stood out there. Now we're going to say not only stand out there, but have your ID with you. What if you didn't bring your ID? They going to send you home to get your ID? Baloney. You're taking off. You're not going to vote. So I don't want to keep this going, but it just seems to me not the right thing to do. Not good public policy. Thank you, Mr. President.

SENATOR GATSAS: Senator Flanders, if I look at line five and read the current law, "The ballot clerk shall state the address listed on the checklist for the voter and ask if the address is correct. If the address on the checklist is not correct, the ballot clerk shall correct the address in red ink on the checklist." It then goes on to say, "the ballot clerk shall then require the person desiring to vote to furnish a driver's license or other form of photographic identification verifying the person's identity and residence." Reading this, would you believe that I read it saying that, if once they give you the address, that you don't need to show a picture ID or after that?

SENATOR FLANDERS: I disagree Senator, because it says here "the ballot clerk shall then require". It doesn't say "may"; it says "shall". So, in other words, you come in, and if I may, and Senator Morse must have a better town than I do because I have been moderator for 36 years and it has been the law you state your name. I have signs in Antrim and so do all the... "State your name", and they will come in and they will stand there. Now, if they voted 40 times like Senator D'Allesandro said, and they still don't remember to give their name, what type of a problem are you going to have getting an ID? But this, if I read this, and we put a lot of time in committee, and when you go up to the check-

list, you'd say, "Robert Flanders" and they would say, "One Whiton Road" and I would say "yes". Then this says, "then the ballot clerk shall require the person."

SENATOR GATSAS: But I believe that there is a semicolon in there that states that if it is incorrect, then they correct it in red ink, and then go on to say that you must prove by a photographic identification. So I think there...and I am not an attorney, but I think that some of the legal beagles...

SENATOR FLANDERS: I think the word "shall" says you shall do it. Right?

SENATOR HASSAN: I rise in opposition to this bill. We had a robust discussion about it during committee hearing on the bill. I am reminded by the very discussion that we are just having. Senator Gatsas indicated his interpretation of this bill. Senator Flanders has a different interpretation of this bill. One of the privileges of sitting on the Internal Affairs Committee is that we get to hear, with some frequency, from our Secretary of State and his staff. He has reminded us consistently throughout discussions of these bills that it is extraordinarily important for us to balance access to the polls with our desire to prevent voter fraud. All of us are concerned about that, but he has gone on the record several times as saying one incident of voter fraud or perceived voter fraud is not a reason to over react the other way. Similarly, having an ambiguous piece of legislation for such an important issue as this strikes me as the wrong thing for this Senate to do at this time. Finally, I will rise to say that there are people in the state of New Hampshire who do not have photo identifications. I can think of my son who will be 18 in a year and a half who has no photo identification because he will never drive a car. I can think of my in-laws who never renewed their licenses after deciding to give up driving as they became more infirmed, and who operate entirely on a cash basis because they've never believed in credit cards, and they manage fine without photo IDs in town. I think there are serious issues raised by this legislation. I thank the sponsor of this legislation for bringing them to this, but I think we raised a lot of questions about the whole issue of what we would do for citizens who don't have photo IDs, how accessible getting photo IDs is for those people, and I don't think this legislation is ready. It has not addressed those issues that I think this entire body shares. So I would ask my colleagues here to vote against this bill and see if we can do better and really try to address this specific problem we need to address. I think this one overreaches. Thank you so much.

SENATOR MARTEL: Thank you very much, Mr. President. I am the prime sponsor of this bill. I also remember going to the polls in five different locations in Manchester and the town of Litchfield in the last election. In three of those wards in the city of Manchester, they had the clerks come out in wonderment asking themselves, who are these people, where are they coming from? An example of that, especially in ward 9 and ward 6 when the lines kept on going till 9:30 at night when people voted and people did not leave, they voted. Some earlier spoke about the fact that when you go to the airport, you need an ID. When you go to the bank, you do also. When you go to the pharmacy you need one as well. When you go to the hospital, you have to show an ID. To drive, like was said earlier, you need to have a driver's license with a photo on it. This would only assist the people who work at the polls in identifying who the voter really is for those voters they don't know. Not everyone is known person-

ally in these days when there is heavy voting. This does not discourage anybody from voting. I detest the fact that somebody says we're neglecting people and we're making them...we're giving them an opportunity not to vote. We give them every opportunity not to vote. We are just trying to discriminate against them. I have never, ever said or implied that people should not vote. All we should say is that make sure that the people who are voting at the right places and the right time. Manchester has 12 wards. Some wards intersect each other on the corner streets. I know some of my neighbors that are on one side of the street who go to one ward and on the other side of the street go to the other ward. It could very easily, new people moving into the neighborhoods, not understand that and go to the wrong polling place. This could be rectified by showing an ID and saying to people "you're in the wrong place at the wrong time". Speeding things up. This bill does nothing to lengthen the lines that were extremely long in the last election. In fact, I don't know how many voters called me in the last...in the week prior...after the election, to notify me that they actually didn't go vote, but they were registered to vote, because they saw lines out side. This goes both ways. It is not just the non-voter or the person who needs to show an ID who has a problem or supposed problem here. It is the person who is registered to vote who just walked away because they were discouraged. This would help that situation. So, Mr. President, I urge my fellow Senators to please support this bill on an ought to pass motion, and bring this, and ease this problem at the polls. Thank you, Mr. President.

SENATOR LETOURNEAU: Senator Martel, are you aware that the Department of Safety provides non-driver photo identification for our citizens?

SENATOR MARTEL: Yes they do. I should have mentioned that. You are correct.

SENATOR LETOURNEAU: Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I rise in opposition to this bill. Fundamentally, I am opposed to any sort of confrontation as such at the polling place. I can remember the discussion we had just a week or so ago about another voting bill that I think got tabled. One of the problems in the discussion that came up was the fact that there is no real uniformity on how things are handled at different polling places around the state, which concerns me because there will be different interpretations of what this statute would mean. I can visualize that someone would come into a polling place and, using the example that was given, two people with the same name would present themselves to the ballot clerk and they would ask for further identification and they may have none, which time they would ask for something else. I mean, what else do we have that specifically identifies an individual? That would be a social security number. We don't want to go down that path and have people exchanging social security numbers at the polling place because that would tell the difference between a father and a son as was pointed out. I also just raise the point that, in line 11, there is a reference to required identification which refers back to the previously bolded area. Now, I understand what a driver's license is. But then it talks about "or other form of photographic identification verifying the person's identity and residence." I think I could probably go down the street here and buy a picture ID with my picture on it that also has my address on it, and it would look pretty official, but it would just be from a retailer. I would walk into the polling place and that would represent what I would con-

sider would be a photographic identification under this piece of legislation. I think it is internally confusing and I oppose that sort of burden being placed on the ballot clerk or the moderator. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the ought to pass motion. I go back to the 17-year-old in Londonderry. He could vote because nobody asked him for an ID because they can't. But if he'd gone down the street a little bit, he couldn't have bought a six-pack of beer, because there they require an ID. He couldn't have bought a pack of cigarettes, but he could vote because nobody said "prove to me who you are", and that is where we are. Perceived voter fraud? It's not perceived. There are many, many cases handed over to the Attorney General. The Attorney General's Office says its too expensive to pursue because, as a percentage of the total voters it's not that high. But it does exist. People show up at the polls and say I am who I am, even if it is same day registration. And you ask them for an ID and they say give me the affidavit. Tell me they weren't prepped. They know exactly how to do it because nobody in the state of New Hampshire is required to show a pictured ID. As far as things being done differently from community to community, you bet. We will never change that because it is volunteers like us who get about \$35 for the day who are moderators. Except in Antrim, I think they give them \$100. We don't go to school. I got chosen to be an assistant moderator one day because the moderator had a heart attack on the floor and they needed somebody. It was lucky for me that I had been on election law so at least I knew where to look. We have tried in this state to bring everybody together. The Secretary of State's hold many, many, many, conferences to try to help people understand what it is they're supposed to do. But then they don't run for re-election the next year and we're back to a guy just like us, learning the ropes. And what's wrong with walking in and saying here's my license? I have talked to a lot of people. A lot of people were flying away for the week. Everybody I guess is looking for sun and for some warmth. And when you get on the plane, I'll bet you, you don't get through the detector without a pictured ID. I don't care whether it is the airport here or the airport in Massachusetts. You don't go through. So what is wrong with holding the same standards for voting? I think voting is more important. It is certainly more important than buying a pack of cigarettes or not allowing somebody to buy a pack of cigarettes. We're not asking for a lot. We're just asking that when you get there, you should your ID. There may be a lot of people who don't have one, but I haven't met anybody yet who didn't have a pictured ID of some sort in their wallet. Thank you, Mr. President.

SENATOR FOSTER: We won't talk about education funding plans; not yet.

SENATOR CLEGG: That could require an ID.

SENATOR FOSTER: My question is this. You said in your remarks that voting is more important than traveling or buying a pack of cigarettes. I would agree with you. I guess my question is, if somebody doesn't have their identification that day, and it is near the end of the day, aren't you then depriving them of that fundamental right? If I forget my photo ID I can go the next day and buy a pack of cigarettes or a 24 hour store probably an hour later, but if I happen to show up in my city of Nashua at 7:50 without my ID, I am out of luck. So haven't you deprived that person of that fundamental right?

SENATOR CLEGG: No, I don't believe I have. First off, I think you ought to be prepared. If you are going to vote, you ought to know who the candidates are; you ought to know what they stand for; and you ought to have your ID with you. If you can't be prepared when you get to the polling place, then maybe you shouldn't vote.

SENATOR FOSTER: I think I've heard for years in the House when I was there and I will probably going to hear it in five minutes, how we can't possibly change straight ticket voting because people won't possibly understand that change because they have been doing it for years. So you are anticipating that if you put this law in effect, that there will be dozens, probably hundreds of voters who aren't going to show up with their ID?

SENATOR CLEGG: First off, I have never heard that as the reason why we should do away with straight ticket or not do away with straight ticket voting. So you have...we are in different parties, so maybe that is the difference. I think that, yes, people will be informed that they need an ID. And as I said previously, I've never met anybody who hasn't carried ID so.

SENATOR FOSTER: Thank you.

SENATOR GATSAS: Senator Clegg, just for clarification. If I go to the polling place, give them my name, they give me my address and I say that's correct. Do I then have to show them a picture ID?

SENATOR CLEGG: The way that I read this bill, no.

SENATOR GATSAS: So if I go to the polling place, I give them my name and the address is incorrect, and I say no, and they change it in red ink, then I must show them a picture ID?

SENATOR CLEGG: The way that I read the bill it says "The ballot clerk shall then require the person desiring to vote, to furnish a driver's license or other form of photographic identification verifying the person's identity and residence."

SENATOR GATSAS: So with those two answers, and I know that the testimony that we have here in the Senate is very important because people look back at it, that nobody is going to be disenfranchised from voting if their address is correct and they don't have a picture ID because they should not be asked for that?

SENATOR CLEGG: That's the way I read the bill.

SENATOR GATSAS: Thank you.

SENATOR FLANDERS: May I first do a would you believe? Would you believe Senator that IDs did not keep certain persons from boarding planes back on 9/11? And I further would make a motion that we re-refer this back because of this latest comment that we have a real problem with the intention of this thing. If we vote this out today and we don't understand whether it is this way or that way, I think we ought to re-refer it and see if we can straighten it out.

SENATOR EATON (In the Chair): Senator Flanders, was that a motion that you just made?

SENATOR FLANDERS: Yes, to see if we can straighten it out. Mr. President, I want to send it back to committee so that we can re-work that wording and find out what it really means because we certainly have several.

SENATOR EATON (In the Chair): The motion has been made to recommit.

Senator Flanders moved to recommit.

A division vote was requested.

Yeas: 13 – Nays: 9

Adopted.

SB 26 is recommitted to the Internal Affairs Committee.

SB 52, establishing a study committee to review the state employee incentive and reward program. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Boyce for the committee.

Internal Affairs

February 16, 2005

2005-0341s

05/03

Amendment to SB 52

Amend the title of the bill by replacing it with the following:

AN ACT establishing the state suggestion and extraordinary service award program.

Amend the bill by replacing all after the enacting clause with the following:

1 Suggestion and Extraordinary Service Award Program. RSA 99-E is repealed and reenacted to read as follows:

CHAPTER 99-E

SUGGESTION AND EXTRAORDINARY SERVICE AWARD PROGRAM

99-E:1 State Suggestion and Extraordinary Service Award Evaluation Committee.

I. There is hereby established a state suggestion and extraordinary service award evaluation committee, the duties of which shall be to:

(a) Review suggestions made by state employees under this chapter for possible reward or recognition.

(b) Review extraordinary service by state employees for possible award or recognition.

(c) Recommend to the governor and executive council the making of monetary awards in accordance with this chapter.

(d) Recommend to the governor and executive council the provision of, or itself provide for, non-monetary recognition of state employees in accordance with this chapter.

II. The state suggestion and extraordinary service award evaluation committee shall consist of:

(a) The director of personnel, who shall serve as chairperson.

(b) The commissioner of administrative services, or designee.

(c) Two state employee members, appointed by the governor, one of whom shall be selected from a list provided by a certified public employee bargaining unit, who shall serve 2-year terms, unless either member ceases to be an employee of the state, in which case his or her term shall automatically expire and a successor shall be appointed for a 2-year term.

(d) One member of the senate, appointed by the senate president, who shall serve a term coterminous with the member's legislative term.

(e) One member of the house of representatives, appointed by the speaker of the house of representatives, who shall serve a term coterminous with the member's legislative term.

III. In addition to such other communications to governor and council as are provided in this chapter, the state suggestion and extraordinary service award evaluation committee shall submit to the governor and council, the speaker of the house of representatives, and the president of the senate an annual report of its activities, including employees recognized and rewarded and the reasons for recognition or recommended award, together with a list or copy of all proposals submitted to it, whether or not implemented or recommended. The report shall be submitted by October 1 of each year.

IV. State suggestion and extraordinary service award evaluation committee members shall serve without compensation and no member shall participate in making any recommendation that may result in an award or recognition to himself or herself.

99-E:2 Departmental Award Evaluation Committees.

I. Each department, as defined in RSA 21-G:5, VI, shall establish a departmental award evaluation committee, the duty of which shall be to make recommendations for awards and recognition to the state suggestion and extraordinary service award evaluation committee in accordance with this chapter.

II. Each departmental award evaluation committee shall consist of 3 employees of the department, appointed by the commissioner of the department.

III. The term of departmental award evaluation committee members shall be 2 years, unless the member ceases to be an employee of the department or is replaced by the appointing commissioner, in which case his or her term shall automatically expire and a successor shall be appointed for a 2-year term. Departmental award evaluation committee members shall serve without compensation and no member shall participate in making any recommendation that may result in an award or recognition to himself or herself.

IV. In addition to such other communications to the state suggestion and extraordinary service award evaluation committee as are provided in this chapter, departmental award evaluation committees shall, by August 1 of each year, submit to the state suggestion and extraordinary service award evaluation committee a list of all award submissions or nominations received within the department in the preceding calendar year, whether or not still pending, with the date of receipt, the name of the person making the submission, the name of the person making the suggestion or performing the service, and a description of the submission or nomination and its status.

99-E:3 Eligible Employees. State employees eligible for awards or recognition under this chapter shall be classified executive branch employees.

99-E:4 Submission and Evaluation Procedures.

I. Any person wishing to submit a suggestion for consideration under the suggestion and extraordinary service award program, or wishing to nominate a state employee for a suggestion or extraordinary service award, shall do so by submitting a written submission or nomination to the award evaluation committee in the department in which the nominee or person making the suggestion is employed.

II. The written submission or nomination shall include at least the following information:

(a) The name of the person who made the suggestion or performed the service.

(b) The job title or position of the person who made the suggestion or performed the service.

(c) The department, division, section, and office, if any, in which the person making the suggestion or performing the service is employed.

(d) The name of the immediate supervisor of the person making the suggestion or performing the service.

(e) The name, job title, and department of the person making the submission or nomination, if that person is someone other than the person who made the suggestion or performed the service.

(f) A detailed description of the suggestion or the service performed.

(g) If the submission or nomination involves a suggestion made by an employee:

(1) The approximate date that the suggestion was first made.

(2) The person to whom the suggestion has been conveyed.

(3) Whether or not the suggestion has been implemented and, if so, a description of the results of such implementation, including any savings realized or revenue generated and the method of calculation thereof.

(h) If the person making the submission or nomination is someone other than the person who made the suggestion or performed the service, whether the person who made the suggestion or performed the service is being recommended for a monetary award or for non-monetary recognition.

(i) Whether or not the suggestion or service is one for which the employee has been nominated for, or has received, some other form of award, and the nature or amount of the award received.

(j) The date and time of the filing of the submission or nomination.

III. Employees may jointly submit one submission or nomination, and may be jointly nominated for an award or recognition, provided that the submission or nomination clearly states that it is a joint submission.

IV. If the same suggestion or service nomination is submitted more than once, the first submission or nomination relating to the suggestion or service that is received by the departmental award evaluation committee shall be the submission or suggestion considered for an award or recognition, unless the committee making the determination, in its discretion, concludes that consideration of the first submission or nomination would result in significant injustice.

V. Within 60 days of receiving a submission or nomination, a departmental award evaluation committee shall inform the person submitting the nomination or suggestion, in writing:

(a) Whether or not the committee recommends an award or recognition; or

(b) That additional time is required for the committee to make its determination, specifying the amount of time required; and/or

(c) That additional information is needed. If additional information is needed, the committee shall specify the information required and, unless the additional information relates to the implementation of a suggestion under RSA 99-E: 5, III, shall specify the date by which the information is to be provided. If the additional information is not received by the date specified, or any extended period of time allowed by the committee, the committee may decline to recommend the issuance of any award or recognition.

VI. Upon reaching a conclusion on a submission or nomination, or after failing to receive additional information in response to a request, a departmental award evaluation committee shall forward a copy of its recommendation to the state suggestion and extraordinary service award

evaluation committee, with a complete copy of all documents contained in the award nomination file, including, at a minimum, those specified in paragraph XII. If the final determination is that an award or recognition is recommended, the departmental award evaluation committee shall include in its determination the amount or nature of the monetary award or non-monetary recognition recommended.

VII. The state suggestion and extraordinary service award evaluation committee shall, within 60 days of receiving a determination from a departmental award evaluation committee, if any, or within 60 days of receiving a submission or nomination from another person, indicate in writing, with a copy to the person making the submission or nomination and the departmental award evaluation committee, if any, whether or not it concurs with the determination of the departmental award evaluation committee and:

(a) If it recommends an award or recognition, the nature or amount of the award or recognition recommended; or

(b) If it does not recommend an award or recognition, the reason therefor, which may include reliance upon the determination of any departmental award evaluation committee; or

(c) If it believes that the suggestion or nomination should be forwarded to the governor and council without determination or recommendation in accordance with paragraph IX, that the submission or nomination will be so forwarded; or

(d) If it believes that additional time is required for the committee to make its determination, the amount of additional time required to make the determination; or

(e) If it believes that additional information is needed, a specification of the information required and, unless the additional information relates to the implementation of a suggestion under RSA 99-E: 5, III, the date by which the information is to be provided. Unless otherwise specified, any additional information requested by the committee shall be gathered by the committee that forwarded the determination for review, or if no lower level committee has forwarded the determination for review, by the person making the submission or nomination to the committee. If the additional information is not received by the date specified, or any extended period of time allowed by the committee, the committee may decline to recommend the issuance of any award or recognition.

VIII. Final written determinations of the state suggestion and extraordinary service award evaluation committee that recommend a monetary award or that recommend recognition by the governor and council shall be forwarded to the governor and council within 30 days of issuance.

IX. The state suggestion and extraordinary service award evaluation committee may, in the alternative to either recommending or declining to recommend a submission or nomination for award or recognition, or as an alternative to requesting additional information, forward the submission or nomination to the governor and council without determination or recommendation, with a complete copy of all documents contained in the award nomination file and a written explanation of the reasons why the committee has either not recommended, declined to recommend, or requested additional information. The governor, with the consent of council, shall take such action, if any, on the nomination or submission that they, within their discretion, deem appropriate.

X. If the state suggestion and extraordinary service award evaluation committee, in its discretion, concludes that a suggestion that has been successfully implemented in a single department, division, office,

or other subdivision of the state may result in additional benefit if implemented on a larger scale, the committee may so state in its submission to the governor and executive council. In such a case, an employee may, on one additional occasion, be considered for further or additional award or recognition for the suggestion.

XI. Any person believing that there is good cause for not submitting a submission or nomination to the departmental award evaluation committee may submit his or her submission or nomination to the state suggestion and extraordinary service award evaluation committee. The state committee shall determine whether, in its discretion, it believes that there is good cause for not submitting the submission or nomination to the lower-level committee. If such good cause is found, the state suggestion and extraordinary service award evaluation committee shall consider the submission or nomination in the first instance. If such good cause is not found, the committee shall refer the matter to the lower-level committee for initial determination.

XII. An award evaluation committee shall include in its file relative to a suggestion or nomination at least the following:

(a) The original written submission or nomination.

(b) All recommendations of award evaluation committees relative to the submission or nomination.

(c) Any calculations as to savings or increase in revenue, or other information, which the committee believes may be of assistance in determining the appropriate nature or amount of award, if any.

XIII. Files of award committees and documents contained therein shall not be deemed to be public documents or records within the meaning of, or subject to disclosure under, RSA 91-A, and meetings of award evaluation committees shall not be subject to the public meeting requirements of RSA 91-A, provided, however, that final written determinations and recommendations of award committees shall be subject to disclosure under RSA 91-A to the extent that such documents do not contain otherwise privileged or confidential information.

99-E:5 Suggestion Award Standard.

I. A departmental award evaluation committee shall recommend such monetary or non-monetary recognition as it, within its discretion, concludes is appropriate for original suggestions that the committee concludes may, if implemented, accomplish any of the following:

(a) Improve government cost savings.

(b) Improve government efficiency.

(c) Increase revenue to the state by a means other than the establishment of a new, or an increase in an existing, tax.

II. The state suggestion and extraordinary service award evaluation committee shall recommend to the governor and council such monetary awards as it, within its discretion, concludes are appropriate for original suggestions that may, if implemented, accomplish the ends specified in paragraph I. The state suggestion and extraordinary service award evaluation committee shall either recommend to the governor and council such non-monetary recognition as the committee, within its discretion, believes is appropriate for original suggestions that, if implemented, may accomplish the ends specified in paragraph I, or itself issue such non-monetary recognition.

III. Prior to making a recommendation for award, or recommending or issuing non-monetary recognition, either a departmental award evaluation committee or the state suggestion and extraordinary service award evaluation committee may recommend that a suggestion be implemented

and may defer its determination pending receipt of information relative to that implementation. If a suggestion has been implemented prior to the time that it has been submitted or nominated for award, the committee may defer its determination relative to award pending receipt of information on the success of such implementation, including, if applicable, the amount of any savings or revenue realized and the method of calculation. If the state suggestion and extraordinary service award evaluation committee concludes, in its discretion, that it is appropriate to do so, that committee may recommend or suggest implementation of a suggestion in units beyond those in which implementation has been accomplished or suggested and may, in its discretion, defer its determination relative to award pending receipt of information relative to that implementation.

IV. A suggestion shall not be eligible for award or recognition if the award evaluation committee determines, in its discretion, that the suggestion:

(a) Is of the type that is expected to be made as part of the employee's regularly-assigned duties or job responsibilities;

(b) Was under consideration by the state prior to the time that the suggestion was made by the employee;

(c) Was previously made by another individual, whether or not previously submitted to an award evaluation committee; or

(d) Except as provided in RSA 99-E:4, X, is one for which the employee has previously been nominated for, or has received, a monetary award from the state under this chapter or its predecessor chapters.

99-E:6 Extraordinary Service Award Standard.

I. A departmental award evaluation committee shall recommend such monetary or non-monetary recognition as it, within its discretion, concludes is appropriate for extraordinary service in the interest of the state that is either:

(a) Outside of or beyond the scope of an employee's regular job responsibilities or functions and involves circumstances where only immediate action by the employee could avoid or avert probable harm to an individual, to property, or to the financial interests of the state; or

(b) Within the scope of an employee's regular job responsibilities or functions and involved the demonstration of abilities or efforts greatly above and beyond any standard of performance expected of the employee.

II. The state suggestion and extraordinary service award evaluation committee shall recommend to the governor and council such monetary awards as it, within its discretion, concludes are appropriate for extraordinary service that meets the criteria of paragraph I. The state suggestion and extraordinary service award evaluation committee shall either recommend to the governor and council such non-monetary recognition as the committee, within its discretion, concludes is appropriate for service that meets the criteria of paragraph I, or itself issue appropriate non-monetary recognition for such service.

99-E:7 Amount of Monetary Awards.

I. The amount of any monetary award recommended by a committee in regard to any one suggestion or service shall not be greater than \$10,000.

II. If an award evaluation committee determines, in its discretion, that an appropriate measure of award would be the amount of any savings or increase in revenue realized by the state as the result of a service performed by an employee, or as the result of a suggestion which has been implemented, the amount of a monetary award recommended

by the committee may not exceed 10 percent of the amount of the savings or increase in revenue to the state during the first fiscal year of the implementation of the suggestion, or the fiscal year in which the service was performed, nor may it exceed the amount of \$10,000.

III. If a monetary award is issued by the governor and council based upon the amount of savings or increase under paragraph II, an amount equal to the monetary award may, in the discretion of the governor and council, be paid from the budget of the specific department or the departments believed to have received the benefit of the suggestion or service during the first fiscal year of implementation of a suggestion, or during the fiscal year in which the service was performed. Any remaining savings or increases resulting from the suggestion or service shall lapse to the general fund. If the unit from which the award is paid is self-funding, the award shall be paid from the unit's operating budget. The commissioner of a department from which an award is to be paid under this paragraph, shall certify any amounts so appropriated to the director of personnel for transfer and payment to the employee.

IV. If a suggestion which has previously been submitted or nominated for award is again submitted or nominated under RSA 99-E:4, X as the result of larger-scale implementation, the amount of any additional monetary award recommended shall be in such amount as the committee, in its discretion, believes is proper, but shall not, in any event, exceed \$5,000.

V. The total amount of monetary awards recommended by the state suggestion and extraordinary service award evaluation committee between October 1 of one year and September 30 of the following year shall not exceed \$25,000.

VI. There is hereby established in the office of the governor a special fund in the amount of \$25,000, which shall be used for employee suggestion and extraordinary service awards, if any. If the entire appropriation is not used for employee suggestion and extraordinary service awards in any fiscal year, the amount appropriated for the fund in the next fiscal year shall be only such amount as is necessary to bring the total amount of the fund to \$25,000.

VII. This chapter shall not be construed to limit the availability of any employee award or recognition not arising pursuant to this chapter

VIII. The governor, with the consent of council, is hereby authorized to draw a warrant for monetary awards under this chapter out of any money contained in the fund established under paragraph VI. The governor and council shall not approve expenditures from the fund in excess of \$25,000 in any fiscal year, shall not issue any single award in excess of the amount indicated in paragraph I, or, in case of additional awards under paragraph IV, shall not issue any award in excess of the amount set forth in paragraph IV. In issuing awards or recognition, the governor and council shall not be limited by any recommendation of the state suggestion and extraordinary service award evaluation committee. The decision of whether to issue a monetary award for suggestions and services under this chapter, and the amount thereof, if any, shall, with the foregoing limitations, be solely within the discretion of the governor and council.

IX. Award evaluation committees recommending monetary awards may consider, but shall not be required to make recommendations according to, the following suggested ranges of award for the following types of suggestions or services:

(a) For suggestions to improve government cost savings, \$500 to \$2,500, or a percentage of the amount of savings as specified under paragraph II.

(b) For suggestions to improve government efficiency, \$250 to \$1,500, or a percentage of the amount of savings or revenue increase as specified under paragraph II.

(c) For suggestions to increase revenue to the state by a means other than the establishment of a new, or an increase in an existing, tax, \$250 to \$1,500 or a percentage of the amount of increase as specified under subparagraph II.

(d) For services outside of or beyond the scope of an employee's regular job responsibilities or functions involving circumstances where only immediate action by the employee could avoid or avert probable harm to an individual, to property, or to the financial interests of the state, \$500 to \$2,500, or a percentage of the amount of increase or savings as specified under subparagraph II above.

(e) For services within the scope of an employee's regular job responsibilities or functions involving the demonstration of abilities or efforts greatly above and beyond any standard of performance expected of the employee, \$250 to \$1,500 or a percentage of the amount of increase or savings as specified under subparagraph II above.

99-E:8 Nonmonetary Recognition. A departmental award evaluation committee may, in its discretion, recommend, and the state suggestion and extraordinary service award evaluation committee may, in its discretion, issue or recommend, non-monetary recognition in lieu of, or in addition to, recommending a monetary award under this chapter. Non-monetary recognition shall be in such form as the committee, in its discretion, believes is appropriate for the service rendered or suggestion made.

99-E:9 No Entitlement To Award.

I. This chapter shall not be construed to confer any procedural or substantive rights upon persons submitting nominations or submissions, or persons making suggestions or rendering services, and no person shall have any right or vested right whatsoever to any award or recognition under this chapter. Whether or not to recommend any award or to recommend or issue any recognition shall be solely within the discretion of the award evaluation committee or other entity charged under this chapter with the making of award or recognition determinations, or charged with issuing the same.

II. Assessments of submissions and nominations by award evaluation committees shall not be subject to the provisions of RSA 541-A:29 and determinations of award evaluation committees shall not be subject to the institution of adjudicative proceedings under RSA 541-A:31.

99-E:10 Filings Not Required. Members of the state suggestion and extraordinary service award evaluation committee, and members of any departmental award evaluation committee, shall not, unless otherwise required by virtue of another position held by the member, be subject to the financial reporting requirements of RSA 21-G:5-a.

2 Effective Date. This act shall take effect 60 days after its passage.

2005-0341s

AMENDED ANALYSIS

This bill establishes a state suggestion and extraordinary service award program for classified state employees. The bill replaces former RSA 99-E, relative to suggestion and incentive awards for state employees.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 52 ought to pass with amendment. Senate Bill 52, with the committee amendment, will revise the state employee incentive reward program. I submitted the bill originally as a study committee, as a placeholder, while

the members of the Incentive Committee were working to draft a rewrite of the statute. That has been done and we now have that as the committee amendment. This program has been difficult to run because of the way it was originally set up in statute. The amendment makes the program applicable to executive department employees only, and streamlines the process for evaluation of suggestions and the actuality of giving the rewards. Senate Bill 52, with the amendment, provides a much needed way to get an employee incentive and reward program running smoothly. The Internal Affairs Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 174, relative to itemizing indirect collective bargaining costs on budget warrant articles. Internal Affairs Committee. Inexpedient to Legislate, Vote 6-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 174 be found inexpedient to legislate. Senate Bill 174 would require indirect costs of collective bargaining to be itemized on budget warrant articles. The committee respects the desire of town budget committee members, some town budget committee members, to have the costs reviewed. However, the committee had concerns about the vague wording of the bill and we believe the issue should ultimately be resolved at the local level. The Internal Affairs Committee asks for your support of the motion inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 204, relative to party columns on ballots. Internal Affairs Committee. Inexpedient to Legislate, Vote 4-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 204 be inexpedient to legislate. This bill would have revised the statute, changing to the column form of ballots, which was only adopted as of January 1st of this year and has not yet actually been used. The bill that we passed, I believe last year changing the ballots, changed it from a top down method where, for instance, for President, you would have the President one candidate, the next candidate and then U.S. Senate first one candidate and then the other coming down the ballot. We changed that last year to make that, I think, fairer to everybody, in that everybody is in a column. You have President, the first column is one party, the second column is the second party, third, fourth as many columns as there are parties and independents. So everybody has an equal distance down the ballot for their placement on the ballot. This bill would have added complexity to that by making the columns rotate from polling place to polling place, and would have just caused more confusion and, in some cases, more printing costs. Therefore, we recommended it inexpedient to legislate. Thank you.

SENATOR LARSEN: I rise to oppose the motion of Senate Bill 204 being inexpedient to legislate. Part I, Article XI of the New Hampshire Constitution states two important constitutional guarantees, which SB 204 was designed to safeguard. First, it guarantees the right to vote stating "all elections are to be free and every inhabitant of this state 18 years and upwards shall have an equal right to vote in any election." Secondly, it

concludes with a guarantee that “every inhabitant of this state, having proper qualifications, has an equal right to be elected into office.” So, according to our own Constitution, we can not and should not pass laws which discriminate against a person’s equal right to be elected, nor should we give systematic electoral advantage of one inhabitant or class of inhabitants over another. Yet, both the previous versions of RSA 656:5 and the newly enacted version which Senate Boyce just referenced, favor the candidates of the majority party over the minority. It is our belief that this favored treatment provision violates Part I, Article XI of the New Hampshire Constitution, which provides that all citizens with the proper qualifications have an equal right to be elected into office. RSA 656:5, as you know, was changed effective this year. I don’t think most voters know that it was changed because they haven’t yet seen this on the ballot. But that change says “the names of all candidates nominated in accordance with the election laws shall be arranged upon the state general election ballot in successive party columns. Each separate column shall contain the candidates of one party. The first column shall contain the names of the candidates”...this is the important part...”the first column shall contain the names of the candidates of the party which received the largest number of votes in the last proceeding state general election.” As everyone who’s seen a ballot knows, candidates on the ballot previously had been arranged by office and placed on separate lines within a separate box. As always, listed first were the candidates of party receiving the largest number of votes in the preceding election. This favored treatment is particularly noticeable in New Hampshire House races where, because of multi-member districts, the names of non-Republican candidates are usually buried far below those of the long list of the majority party. In a 2002 Supreme Court decision right here in New Hampshire, the justices noted this favoritism bestowed by this statute and noted that it raised a fundamental issue of fairness, stating, and this is their words, “although we were not called upon today to determine the effect of RSA 565:5 requiring majority party candidates for the House to be listed first on all ballots, the number and size of all multi-member districts in this plan, may justify concern about the statute.” They caught the unfairness of this statute. They say that it may justify concern. It does justify concern and it should to all of us. Recent studies of the effects of name placement in elections show that the preference given to the majority party candidates in New Hampshire creates an unfair, unwarranted and unnecessary advantage. There is a Professor Krosnick in Stanford University who has actually completed numerous studies on the effect of name placement on ballots. I think everyone in this room knows what is going on here. But he actually documents it scientifically. The advantages gained by primacy effects, range from 1.4 percent to 6.3 percent, averaging 2.8 percent. Many races in New Hampshire are decided by lesser margins than that. **TAPE CHANGE** gives an unfair advantage to candidates in the majority party, allows for systematic discrimination and disadvantage against numerous classes of voters in the design of the ballot and thus violates Part I, Article XI of the New Hampshire Constitution. Each of us in this room took an oath of office to uphold the Constitution of our state. Senate Bill 204 should be voted ought to pass. Thank you, Mr. President and I ask for a roll call.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Larsen.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 16 - Nays: 7

Committee report of inexpedient to legislate is adopted.

SB 218, eliminating straight ticket voting. Internal Affairs Committee. Inexpedient to Legislate, Vote 4-2. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move SB 218 inexpedient to legislate. This bill would eliminate the voters' ability to vote by straight ticket. Straight ticket voting provides an easy way to vote for those voters who wish to elect all members of a particular party. Straight ticket voting is optional, and those who do not wish to use it do not have to. The committee urges your support for inexpedient to legislate.

SENATOR BARNES: Thank you, Mr. President. I just want to be consistent with what I do up here. In the years past, I have always voted against this because I think straight ticket voting is ridiculous and I will continue to vote against straight tickets. I think the folks that vote should be able to know, as we heard in earlier testimony. They go into the polls, they should know who the candidates are and they should be able to vote without putting a mark up at the top of a column. I think they should think a little bit and be intelligent enough to know who they want to vote for. Thank you, Mr. President.

SENATOR FOSTER: I speak in opposition to the committee report. Actually, I myself don't really oppose straight ticket voting as such. The idea of going to the polls and making an expression that I want to vote for all Republicans or all Democrats or Libertarians of their party status, is fine, in and of itself. That really isn't where the problem lies. The problem lies is, and if you have ever been through recount as unfortunately I have, you will see what occurs. It isn't that people fill out straight ticket and know what they're doing; it is that people fill in the straight ticket box and actually don't know what they're doing. They think what they are being asked, in many instances, is what their party affiliation is. If you have done a recount, you will see that they will fill that in and then fill out most of the ballot, but not all of the ballot. The current law, as it is written that has been interpreted is, if an individual goes in and votes straight ticket, and goes down and goes office by office and skips over one, that the straight ticket designation made at the top is where things default. So what will happen is, if you do a recount, you'll go through and you'll find out that somebody skipped over an office. Now, I don't know about you but I am thinking that if somebody fills out 90 percent of a ballot and just skips over an office, probably they didn't know or didn't care for either of those two candidates, yet it defaults back. And we have had at least two elections that I am aware of, in the not too distant past that that situation has actually tipped the election one way or the other. That is the problem with this. I think therefore I have to oppose the committee amendment. I frankly would...committee report. I would support something that allowed straight ticket voting, but said that once you go to start to fill out the ballot, your straight ticket is canceled as opposed to defaulting back to the straight ticket. That's what we ought to do here. I think it's fine if people want to vote straight ticket. I agree with the Senator, that people ought to know who they are voting for, but if they want

to make an expression that they are a strong party person and they want that to express themselves that way, or just not take a lot of time in the ballot box, that's okay. But we ought not to have a system which clearly is confused. I suspect that maybe all of you even knew that that's the way that ballots are counted, but having been through a recount, that's what occurs and we ought to change that. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. Just quickly. Straight ticket voting was implemented as a device to assist large numbers of illiterate voters in the 1850s. That's not our problem today. Our problem today is, if you do as I do when you are speaking to people in nursing homes or people in elderly living units, oftentimes, I have asked them "what do you think happens, what do you think that box is up at the top?" Guess what they say? They think it's asking them what party they are. They mark that and then they may mark the ones they want to vote for. But they may skip over someone they don't know. The confusion of this alone, should mean...and the reason for which it was implemented, meaning that people couldn't read in the 1850's. They may recognize a star or an elephant or something, but they weren't able to read. Most people going to the polls today can read. They have opinions and they should not be encouraged or confused by this crazy box at the top. I urge you to vote against the inexpedient to legislate motion and I second the roll call.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Martel, Letourneau, Morse.

The following Senators voted No: Green, Gottesman, Foster, Larsen, Gatsas, Barnes, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 13 - Nays: 10

Committee report of inexpedient to legislate is adopted.

SB 159, relative to verbal identification by public officials and employees. Judiciary Committee. Inexpedient to Legislate, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 159 inexpedient to legislate. While the behavior of the law enforcement officer that led to the filing of the bill was clearly inappropriate, the Judiciary Committee feels that the current laws on the books are sufficient. All law enforcement officers are required to wear name tags when in uniform. The committee heard testimony that requiring an officer to identify himself or herself in heated confrontation or other circumstances could put the officer or perhaps the public at risk. In balancing the situation between the officer and the public at risk and an individual's need to know the name of the officer, we came down in favor of the officer and the public safety. For that reason, the Judiciary Committee recommends that this legislation not be adopted. Thank you very much.

SENATOR ESTABROOK: Thank you, Mr. President. I rise against the motion of ITL. Before I can let this one go, I need to rise and express my continuing concern with the issue that underlies the bill. The idea of requiring law enforcement officers to verbally identify themselves grew

out of an incident in Durham. The current statute requires officers to wear ID badges. As a 50 something, who would have to get awfully close to read that badge, it seemed more confrontational to legislate visual ID than verbal ID. I know that the committee heard from law enforcement that this bill would put them at risk. I want to assure my colleagues that, in sponsoring this bill, I had no intention of putting law enforcement at risk. They have a tough job, there is no doubt about it. I appreciate the committee's concern for law enforcement and the need to find the right balance between that concern and a framework for the public's trust. I have learned that the Department of Safety, unfortunately after the committee's exec, submitted written testimony agreeing in concept with Senate Bill 109 that it is good public policy and some suggestions for amendments to address the concerns that have arisen. I have listened to these concerns and those presented at hearing and created a floor amendment to address them. The amendment gives discretion with just cause to law enforcement officers in responding to a request for verbal ID. I believe this amendment and the Department of Safety's input merit consideration and I would ask Senators to support no on the ITL so further deliberation may ensue.

SENATOR GREEN: Senator Foster, I'd just like to get clarification. You know that I was one of those who voted in committee for the committee recommendation.

SENATOR FOSTER: That's correct.

SENATOR GREEN: So when I stand here today, I am fully aware that my position has changed. The reason it has changed basically are a couple of reasons I want to ask you about, are my reasons valid basically. First of all, was there additional testimony from the Department of Safety after we had the hearing?

SENATOR FOSTER: As Senator Estabrook said, we didn't receive testimony, but we received a written communication expressing some concerns with the legislation and some support of it and some amendments.

SENATOR GREEN: What if this was recommitted to committee? Would the committee be able to work with the recommendations of the Department of Safety and then come back to this body with some different wording and possibly a different recommendation?

SENATOR FOSTER: The committee would look at that and consider the piece of legislation to see whether it would want to change its opinion.

SENATOR GREEN: Thank you. I rise to speak. Since we took the vote in committee, the additional information came to my attention and we were wrestling in committee, not with the whole issue of whether or not we had sufficient evidence or not, we were really wrestling with, based on what we knew at the time, there didn't seem to be any great deal of testimony that led us to believe that there was a great need for this piece of legislation. Since that time, however, we have found out that yeah, there is a problem. I wish I had known that at the time I voted, but here we are. I think this is a classic example of a piece of legislation that information comes out after the fact, and I think the people in this committee, and I think the people in this body, want to do the right thing. So I don't think that's a problem. I think what we did was proper at the time. I do think that the committee, working with the sponsor and the Department of Safety, can come back with a little different language and make this a reasonable thing to do. Officer identification, I think, we just

got done debating it, I think for an hour, on identifying people. You know, it is amazing that all of a sudden we are now talking about identifying again. The realities are that it is appropriate for people to expect to be able to identify a police officer or other public official. The problem we had in committee basically was this. We know that we have on the books right now, a requirement for an ID badge for all law enforcement officers. This particular officer did not wear his ID badge. So he was in violation of the law. A law enforcement official in violation of the law. Now, where it was a state trooper, that person should have been brought to the attention of the AG's office to make sure that the law was taken care of in terms of him knowing that he violated and determined whether or not there should be a penalty. The other thing is, as most of you know in this chamber, and I don't know how many of you had the opportunity, to be in a situation where a police officer has stopped you. Have any of you? I hope so. We are all human, right? And, how many of you could read the badge? Think about it. Unless that person is awfully close to you, you really can't see the badge. Now if you take it upon yourself to find out who that officer is, there's a way to find out, I know, but it is very, very difficult in terms of time put into that effort. All I guess I am saying is, I think there is a way to fix this. So I would ask that we give an committee an opportunity to fix it and then come back to you with the appropriate language that I think will make sense and be for the benefit of all the people of the state who have had this problem. It is a problem. It needs to be addressed. Let's address it. Let's not just close our eyes to it and walk away from it. So I would ask at this point in time to recommit, please.

Senator Green moved to recommit.

Motion failed.

A division vote was requested.

Yeas: 8 - Nays: 14

Motion failed.

SENATOR LETOURNEAU: Senator Foster, isn't it true that this particular bill was brought forward to us over one incident?

SENATOR FOSTER: I think the reason it was brought up was one incident. That's correct.

SENATOR LETOURNEAU: My question is this. I know the police said they were going to do some corrections in their policy, but are we faced with a whole rash of incidents in this state where that's a problem?

SENATOR FOSTER: I think that you sort of hit the nail on the head. I think that is another reason why the committee didn't feel compelled to look harder at this issue. There weren't a whole lot of people coming out saying that they had run into the situation. I think there was some testimony that it happens occasionally, but the presumptions and some of the comments here today are that when an officer is asked they won't tell you their name. My guess is that in most instances they will except in a confrontational situation, which is, I think, where this situation arose, where there were heated emotions.

SENATOR LETOURNEAU: Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I'd just like to clarify that yes, I brought this bill forward in response to a single incident. But,

in the short life that the bill has had, I've heard from three other constituents who have had encounters with law enforcement officials within the state of New Hampshire who have had similar experiences where they were unable to get a visual ID and were refused a verbal ID. One of those constituents had put that incident in writing, which I was also going to also present to the committee, had the exec not happened so quickly. So I do not think it is fair to characterize this as an isolated incident. I think it would be acknowledged by a large number of New Hampshire citizens that have had such experiences. It is just that there is no natural organized constituency to follow the bill.

The question is on the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 182-FN, relative to electronic issuance of warrants. Judiciary Committee. Ought to Pass, Vote 4-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 182-FN ought to pass. The bill allows search warrants and arrest warrants to be issued electronically. As the court system in our state expands its computer capabilities, this is one of the old processes that needs to be modernized. Electronic warrants are much more efficient means of transmission. The Judiciary Committee recommends that this legislation be adopted and asks for your support.

Adopted.

Ordered to third reading.

SB 20-FN, relative to an increase in lottery ticket prices. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 20 ought to pass. The bill raises the limit on the price point for lottery tickets from the current \$10 to \$20. The increase will be backed by a comprehensive responsible gaming campaign including brochures and public service announcements in all media outlets. The committee recommends ought to pass on Senate Bill 20. Thank you, Mr. President.

The question is on the motion of ought to pass.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Larsen, Barnes, Martel, Letourneau, D'Allesandro, Morse, Hassan.

The following Senators voted No: Green, Foster, Gatsas, Estabrook, Fuller Clark.

Yeas: 18 - Nays: 5

Adopted.

Ordered to third reading.

SB 36-FN, assessing a fee on all dogs and cats sold at retail that are not sexually sterilized, to be deposited in the companion animal neutering fund. Ways and Means Committee. Ought to pass with amendment, Vote 4-1. Senator D'Allesandro for the committee.

Senate Ways and Means
February 16, 2005
2005-0336s
09/01

Amendment to SB 36-FN

Amend the title of the bill by replacing it with the following:

AN ACT assessing a fee on all cats vaccinated against rabies to be deposited in the companion animal neutering fund.

Amend the bill by replacing all after the enacting clause with the following:

1 Duties of Veterinarians; Fee Collection. Amend RSA 436:102 to read as follows:

436:102 Duties of Veterinarian.

I. It shall be the duty of each veterinarian, at the time of vaccinating any dog, cat, or ferret, to complete a certificate of rabies vaccination in triplicate which includes the following information: owner's name and address, description of dog, cat, or ferret (breed, sex, markings, age, name), date of vaccination, rabies vaccination tag number, type of rabies vaccine administered, manufacturer's serial number of vaccine, and the expiration date of the vaccination. Distribution of copies of the certificate shall be: the original to the owner, one copy retained by the issuing veterinarian and, within 40 days of the vaccination, one copy to the town or city clerk where the dog, cat or ferret is kept. The veterinarian and the owner shall retain their copies for the interval between vaccinations specified in RSA 436:100. A metal or durable plastic tag, serially numbered, shall be securely attached to the collar or harness of the dog. Whenever the dog is out-of-doors, off the owner's premises and not under the control of the owner or handler while working the dog, the collar or harness with the vaccination tag shall be worn. For the purposes of this section, "working the dog" means a dog doing a defined functional canine activity with its owner or handler such as hunting, field work, drafting, and herding or participating in any lawful competitive event, including, but not limited to, conformation shows or obedience trials, field trials, agility events, hunts, sled races, or training activities pertinent to functional canine activities. Cats and ferrets shall not be required to wear the collar or harness with the tag.

II. *A veterinarian shall collect a \$2 fee for every cat that he or she vaccinates against rabies. This fee shall be paid to the commissioner, who shall deposit it in the companion animal neutering fund established under RSA 437-A:4-a.*

2 New Fee Assessed. Amend RSA 436:103 to read as follows:

436:103 Cost. The cost of rabies vaccination **and any associated fee** shall be paid by the owner of the dog, cat, or ferret.

3 Effective Date. This act shall take effect 60 days after its passage.

2005-0336s

AMENDED ANALYSIS

This bill assesses a fee on the vaccination of cats to be deposited in the companion animal neutering fund.

SENATOR D'ALLESANDRO: Thank you, Mr. President. This is a fairness bill. I want to make that perfectly clear. This is a fairness bill. We cannot overly assess the dogs without putting a little bit of the onus on the cats, and I am a cat owner. I want to make that perfectly clear. I own a cat. I actually owned two at one time, but one ran away. Thank you,

Mr. President. I move Senate Bill 36 ought to pass with amendment. During the testimony, the committee heard that, while cats represent the bulk of the animal population, control expenses are paid by the dog owners. The dog owners are the ones funding the program through a \$2 fee assessed when the dog is registered. Now to insure that both dogs and cats are fairly treated, the committee amended the bill by creating a system whereby veterinarians collect a \$2 fee when a cat is brought in for a rabies shot. With this change, the Animal Population Control Program will benefit from a consistent source of revenue without relying on just one half of the animal population that uses the fund. The committee recommends ought to pass with amendment on Senate Bill 36. I might say that the original bill called for a \$15 fee on both dogs and cats who were sold by a licensed pet shop. But we know that they don't sell a lot of cats at licensed pet shops. The overwhelming number of animals sold are dogs. So that is why I say it is a fairness issue. Thank you, Mr. President.

SENATOR ROBERGE: Mr. President, I would urge my colleagues to vote down the committee amendment and vote for the bill as it was originally introduced. May I speak to my motion? As some of you may recall, I was one of the sponsors of the original legislation that made up the state's neutering assistance program 12 years ago along with Governor Shaheen when she served in the Senate. Up until that time, most spay/neuter programs were publicly subsidized clinics that competed for clients with private veterinarians. As you might imagine, this created a lot of hard feelings between the veterinary community and the humane societies. We tried a different approach. We sat down with the representatives of the humane societies and the New Hampshire Veterinary Medical Association and came up with a program that worked well for everyone. It has turned out to be one of the most successful neutering assisted programs in the country, private or public. For instance, the animal shelter in my district had to put down more than 2000 dogs and cats in 1993, the year before the program began. Ten years later, that number had dropped to less than 200, and it wasn't just this shelter. As a result of this collaborative effort, New Hampshire's animal shelters have achieved the lowest statewide euthanasia rate in the country. Over the years though, the program's only revenue source, a \$2 surcharge collected with dog license fees has not been able to keep up with the increases in the cost of living. As a result, the program has had to be shut down and the population of stray, homeless animals has begun to creep up again. Last summer the Pet Over Population Committee met to address the revenue shortfall. We decided that a \$15 surcharge on pet shop sales of unsterilized dogs and cats, most of which are imported from outside the state, would be the fairest and most cost effective way to generate the revenue that this program needs. The Ways and Means Committee has recommended passage of this bill, but with a different revenue source. A \$2 fee collected with cat rabies shot. While this recommendation is well intended, several vets who have supported this program from the beginning have told me and have told several of us that they will drop out if this bill is passed with the cat rabies fee. We can't afford to lose them. By now, two-thirds of the practicing veterinarians in the state have joined the program even though they have to discount their fees by 20 percent to participate. This has prevented it from becoming too much of a burden for any one clinic and has made it accessible for low income pet owners who sometimes have trouble getting transportation. I ask you to join me in voting this

bill ought to pass so that we can secure the necessary funding for this worthwhile program without losing the veterinary support that has made it a model for others around the country. Thank you very much.

SENATOR BOYCE: Thank you, Mr. President. I just wanted to address the fairness issue and I have a different take on the whole matter which I'm sure will not be adopted by the rest of the body. I agree that it is unfair that the dogs have been paying for the sterilization of cats. I am sure that the cats are, you know, freeloaders on this situation and the dogs should be outraged. I agree that very few cats are sold at retail, therefore, this bill as originally introduced would not do much to alleviate that unfairness. I understand the veterinarians don't like the amendment. So, with that understanding, I would actually suggest that we change the spay/neuter program and eliminating cats all together from the program, thereby relieving the program of the expense of having to spay and neuter cats that are not being charged for this service and allow the dogs to have services that they obviously need. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I would like to speak in opposition to the amendment. In the early '90s, New England was faced with major concerns about a rabies epidemic moving from the southern part of the state to the northern part of the state. The legislation that required rabies inoculations was put in place in order to prevent, and it was successful in rabies becoming a major issue with feral cats and other cats here in New Hampshire. My concern is that we have a public health issue and that, by adding this \$2 additional fee, what we are ultimately going to do is discourage individuals from taking those animals in to receive their rabies shot. I believe that is poor public policy. It opens the state up again to the risk of expanded exposure to rabies, and that this is not the way to solve the problem. I would urge this committee to vote against the amendment. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. Basically my dog has told me that as long as she has breakfast in the morning and dinner at night, and my chair to sit in and the fire in the fireplace, she doesn't care that she is paying for cats. Let me just, if I may. I have talked to several vets. Doctor Payne here in Concord who happens to be my veterinarian, is upset that the fact that these vets do give 20 percent of the cost of their service and now we are asking them to be tax collectors, and I don't think that it is fair. I think they are certainly doing their fair share and we should kill the amendment and go back to the original bill. Thank you.

Amendment failed.

The question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

SB 62-FN, allowing court fees to be paid by credit card. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 62 ought to pass. The bill looks forward to the point in time when court filings are performed electronically. District courts are currently accepting credit cards for fines. The bill would extend the practice of the use of credit cards to fees at the other courts. The system would be rolled out to the court system at large over time, beginning in fiscal year 2006

until it is fully implemented by the beginning of fiscal year 2009. The judicial branch negotiated a deal with credit card companies that is in line with what other departments in state government have negotiated and the committee recommends ought to pass on Senate Bill 62. Thank you, Mr. President.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 87, relative to extension of tax liens by the department of revenue administration. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 87 ought to pass. The bill will permit the DRA to extend a tax lien for an additional six years by renewing the lien. A recent Supreme Court ruling found that a real estate attachment is invalid after six years as prescribed by RSA 511:55, a statute that is similar to the one DRA relies on for its authority to lien property. Without Senate Bill 87 it is likely a court will find that the DRA's liens are invalid after six years, and thus limit the DRA's ability to collect unpaid taxes. The committee recommends ought to pass on Senate Bill 87. Thank you.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 20-FN, relative to an increase in lottery ticket prices.

SB 27-FN, relative to an exemption from the annual inspection of health facilities.

SB 36-FN, assessing a fee on all dogs and cats sold at retail that are not sexually sterilized, to be deposited in the companion animal neutering fund.

SB 52, establishing the state suggestion and extraordinary service award program.

SB 55, relative to the New Hampshire film and television commission and state promotional initiatives.

SB 57, establishing a commission to study ways to alleviate medical malpractice premiums for high risk specialties.

SB 87, relative to extension of tax liens by the department of revenue administration.

SB 137-FN-A, relative to the Conway Branch railroad.

SB 153-FN, relative to the administration of certain programs by the department of environmental services.

SB 165-FN, relative to the collection of tax debts from out-of-state debtors.

SB 182-FN, relative to electronic issuance of warrants.

ANNOUNCEMENTS

SENATOR KENNEY (RULE #44): I would just like to recognize yesterday was 60 years ago that we raised the flag over Mount Suribachi at Iwo Jima. It is interesting that we have a strong New Hampshire connection to that occasion in that one of the flag bearers was Rene Gagnon of Manchester, New Hampshire. But, we also have former Representative Alf Jacobson, also a member of this body, the Senate, who was here yesterday as a guest, to speak on his participation on Iwo Jima 60 years ago yesterday. Also, that Representative Ralph Rosen flew as a combat Navel pilot over Iwo Jima on that particular day. For historian buffs, that was a particular day which was a two-week operation where we lost close to 7,000 men that were killed or wounded on that island to basically attack the Japanese, which lost approximately 22,000, all in the efforts to secure that part of the world on the island hopping campaign, on the way to Guadalcanal. It is a very symbolic event for Marines, particularly Marines who have earned the title "Marine". But for many, it is also the monument that is down in Washington, the Iwo Jima Monument which is right on the southern outskirts of Washington, D.C. near Rosslyn, Virginia. That there is a beautiful monument there for many years that was depicted as a WWII monument, and obviously we now have a WWII monument as of last year. I mention that because it means a lot to me that we recognize this day. I had the chance to meet Felix DeWeldon, the sculptor of the Iwo Jima Monument who died a couple of years ago. Any Marine or sailor who knows the event of Iwo Jima and the raising of the flag over Mount Suribachi knows that the efforts of those men and women, and I say women because there were women who participated, not necessarily on the island, but who were in the rear helping out in that great battle. That I would just...if we could just stand and have a moment of silence for those men who were lost on that island. Thank you very much.

SENATOR D'ALLESANDRO (RULE #44): Thank you, Mr. President. Just to follow up on Senator Kenney's remarks. Rene Gagnon was from Manchester, New Hampshire. Eighteen years old when he joined the Marine Corps and served valiantly really in WWII. I had the privilege of teaching Rene Gagnon, Jr. who was my student at Bishop Bradley High School. Rene Gagnon led a very difficult life after he returned from Iwo Jima and died a very terrible death. But Richard Vercauteren, who was a student of mine and became Brigadier General in the Corps dedicated the monument that is at Victory Park in Rene Gagnon's honor. It stands there today. I think the great service done by Rene Gagnon and the other Marines on Iwo Jima is something that we really should think about and think about quite often because they were young guys. Seventeen, eighteen, nineteen years old. The first waves were always young guys. The first waves had an 80 percent casualty rate. Eighty percent casualty rate of those guys that hit the beach. They were young and, when we are young, we think we are invincible and so forth. They gave great service to this country and Rene Gagnon gave great service to this country and we certainly appreciate Major Kenney giving us...Colonel Kenney, excuse me, Colonel Kenney giving us those remarks from Private D'Allesandro. Thank you very much.

SENATOR GREEN (RULE #44): Thank you, Mr. President. Senator Kenney, I really appreciate you bringing our attention to this matter. If my father was alive right now, he would not let me say what I am going to say. He was a Marine. He served on Iwo Jima. He was in the Third Marine Division. He got wounded severely. In his company, there were six people who ended up living after their wave went in. He would not talk about that. He talked about it late in life, but most often he wouldn't speak of. It was a very emotional thing for him, and if you said anything about Iwo Jima, he got very upset. The day that the United States decided to return Iwo Jima to the Japanese government, was probably one of the saddest days of my father's life, because all he could see were those comrades that he had served with on that island and how much they had to go through in order to win that battle. So it is a very, very emotional issue for me. I think it is one that we ought to all remember, that there were great men in this country who came before us, who allowed us to have what we have today. We should never forget that. My dad upstairs, I am sure, is looking down and saying what are you talking about? Don't do that. Well, as a young man when he came home, that was very emotional, and it still resonates very deeply in my emotional memory banks. I thank you very much for that. Thank you, Mr. President.

SENATOR LETOURNEAU (RULE #44): Thank you, Mr. President. As a former House member I used to always look forward to Alf Jacobson's Iwo Jima speech on Iwo Jima Day or around that time when we had a House session. Yesterday I had the opportunity to be in the gallery above the House listening to the debate that was going on in Transportation. I saw Alf Jacobson there. I said, "Alf, are you going to be able to give your speech again this year?" and he said, "yes, they've asked me to come down and give the speech again this year as a guest of the House." I thought that was very appropriate. While Alf and I never really agreed philosophically on a lot of issues, I always looked forward to his speech. He spent ten years in the Senate and was Senate President at one time. He was also the Deputy Speaker for a while in the House. He served 20 years there. Alf not only served his country well as a Marine, he served his country...his state well, as a member of the House and the Senate for 30 years. I think that it was a very good tribute to the Marines that served on Iwo Jima and those of us who will follow him to pay respect to Alf Jacobson. Thank you very much.

SENATOR BARNES (RULE #44): Thank you, Mr. President. There was a tremendous article in the Sunday paper in the *Parade Magazine* that probably most of you read. If you haven't, I suggest that you take a look at it. It was about a couple of photographers and maybe Senator Kenney can elaborate on that a little bit, because I know he has read the article. I am talking about the two photographers that were mentioned. Perhaps you could let the body know.

SENATOR KENNEY (RULE #44): Joe Rosenthal is the gentleman who took the picture of the famous picture. He was an AP photographer. But there was also an enlisted Sergeant, whose name escapes me right now. He was also the gentleman who took the actual movie camera of the flag raising. Which incidentally, was the second flag raising, because the first flag raising was a smaller flag that was raised. Apparently that flag was going to be given to the **TAPE CHANGE** officer who later found out that the Secretary of the Navy was coming and that the Secretary of the Navy wanted that flag. So, they went ahead and raised the second flag which

was larger, so they could ultimately give it to the secretary of the Navy. But, in that second raising of the flag, the sergeant went ahead and again, took a movie picture and, nine days later was actually killed, himself, as he was trying to clear out one of the caves with a fellow Marine. At that point, they kind of went ahead and closed in the cave because apparently there were a lot of explosives in the caves and it was so dangerous to go back in there to get the remains. I think what Senator Barnes is referring to is that those remains still exist in that cave on Mount Suribachi. That we remember, although he is just as famous as Joe Rosenthal, he is often forgotten in history, of American military history, and that perhaps, through the efforts of Senator Barnes and maybe some others, that we might want to approach the commandant of the Marine Corps to find out a little bit more about the individual and bring him to the forefront because, on the evening news program back in the '60s and '70s, when they showed the raising of the flag, it was again, this enlisted sergeant who took that actual movie photograph of the second raising of the flag. So, in that Sunday *Parade* edition last Sunday, he is mentioned quite eloquently, and it just only has been recognized in the last ten years, that his name has really come to the forefront. He basically had that particular movie film shipped back to Hawaii and then later it was processed. He didn't even get a chance to see it because he was killed nine days later. So I just mention that there is a little bit more to the story.

SENATOR GALLUS (RULE #44): Thank you, Mr. President and members of the Senate. I would like us today to remember Dick Bosa who occasionally roamed these halls. The former Mayor of Berlin passed away yesterday. Dick, in keeping with the north country tradition of sending colorful characters to represent us, was certainly a vocal proponent of our needs. I think he was the only Berlin resident to ever run for President. Dick's loss creates a real void for the north country. He never forgot his roots. He worked hard for us and will be remembered by all of us. Thank you.

SENATOR FULLER CLARK (RULE #44): Thank you very much, Mr. President. There are many members of this Senate that served with Representative Hal Melcher in the House. Many of you may or may not know that he was killed last Sunday in a skiing accident where he broke his neck. He was skiing at age 82. He loved what he was doing, but it is still a tremendous loss. He served this state well. It was a pleasure to work with him in the House. I just wanted to recognize his death and to send, on behalf of all of us, our condolences to his family. Thank you.

SENATOR EATON (In the Chair): Before we go, I just wish everybody a great vacation time. Those of you that are going to warm country areas, I hope you enjoy it and think of everybody that is back here that is not. Enjoy your vacation.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the purpose of introducing legislation, receiving messages and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

INTRODUCTION OF SENATE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered SB 225-226, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

05-0936

SB 225-FN-A, establishing video lottery. (D'Allesandro, Dist 20; Gallus, Dist 1; Morse, Dist 22: Ways and Means)

05-0667

SB 226, relative to the regulation of snowmobiles and off highway recreational vehicles. (Flanders, Dist 7; Kenney, Dist 3; Burling, Dist 5; Odell, Dist 8; Alger, Graf 6; Patten, Carr 4; Russell, Belk 6; Daniel Eaton, Ches 2: Transportation and Interstate Cooperation Committee)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate now adjourn from the late session.

Adopted.

Adjournment.

March 10, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Good morning everybody. Guess what? All of us are too busy and it seems to me we spend lots of time rushing here and there, working our lists, promoting our agendas, and sometimes, if you're like me as a result, majoring in the minors. Yesterday a colleague and I across and the street were complaining about some internal church issues that were preoccupying and frustrating us when a woman interrupted our meeting to tell us that she had just learned that she might have ovarian cancer. Our early issues suddenly evaporated into irrelevance and when we eventually returned to our conversation about the church, it looked very different to us. As you do your vital work here, don't be so busy that you do not take the time to step back and ponder long enough so that you can distinguish between what is interesting and what is important, and between what is important and what is essential, and then be sure to do the essential stuff first. Let us pray.

O God, You care greatly about us and about our issues. Teach us to return the favor. May the fingerprints we leave behind through the choices and decisions we make be ones that are marks of indelible and essential dignity and importance and value.

Amen

Senator Odell led the Pledge of Allegiance.

Senator Green is excused for the day.

INTRODUCTION OF GUESTS SPECIAL ORDER

SB 11-FN, extending the local property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Ought to Pass, Vote 3-2. Senator Boyce for the committee.

SPECIAL ORDER

Senator Boyce moved that we Special Order the following Bill(s) to March 17, 2005 at 10:00 a.m.

SB 11-FN, extending the local property tax exemption for wooden poles and conduits.

Adopted.

Without Objection.

COMMITTEE REPORTS

SB 49-FN, including multiple sclerosis in the catastrophic illness program. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 49-FN ought to pass. If multiple sclerosis is considered under the catastrophic illness program, those with MS who qualify would receive some help in paying for prescriptions and the equipment they need. The medical costs for these patients is ridiculously high and many give up. Even though the program is very good, the committee feels it can help a handful of patients who have no other resources. The Banks and Insurance Committee asks you ought to pass.

SENATOR LARSEN: I hope this bill goes to Finance because...it will go to Finance I understand, because I happened to be in this hearing, although I don't serve on this committee, and heard the testimony of those with MS and the need, and the incredible medical costs they have. However, those of us who have been around here for a while, know that our catastrophic illness program has been limited to the same dollar amount for many, many years. The concern is that, as we add what we know are catastrophic illnesses to the list, we have an ever shrinking ability to reach people who have incredible medical costs, debilitating diseases and just an illness that destroys their families and their family's finances. So I call attention to the funding for the catastrophic illness program and encourage that Finance look at this. Thank you.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 58-FN, relative to the workers' compensation special fund for second injuries. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

Banks and Insurance

February 24, 2005

2005-0472s

01/10

Amendment to SB 58-FN

Amend the title of the bill by replacing it with the following:

AN ACT making certain changes in the workers' compensation law.

Amend the bill by replacing all after section 1 with the following:

2 Hearings and Awards; Workers' Compensation. Amend RSA 281-A:43, II to read as follows:

II. A decision of the commissioner, the commissioner's authorized representative, or the board shall take effect ~~[upon the date of notification]~~ and shall become final, in the absence of an appeal from it, 30 days ~~[after notification]~~ **from the date of the decision**. Payment of weekly compensation and entitlement to medical and vocational benefits, if necessary and so ordered by the commissioner **or the board**, shall begin or continue as soon as possible, but no later than 5 working days after the decision's effective date, and shall not be terminated except in accordance with the terms of the decision or of a final court determination. If the commissioner determines that the employer **or carrier** has failed to comply with ~~[the]~~ **any** order, then the commissioner may assess a penalty not to exceed \$100 for each day of noncompliance, beginning on the date of notification of its assessment. Upon continued failure to comply with an order to make payment of the compensation or medical benefits, or to institute vocational rehabilitation, or to pay the penalty, or any combination thereof, the commissioner shall petition the superior court for an injunction to comply. The commissioner shall deposit with the state treasurer any penalty collected under this section.

3 Special Fund for Second Injuries; Workers' Compensation. Amend RSA 281-A:55, III to read as follows:

III. Each insurance carrier and self-insurer shall, pursuant to rules adopted by the commissioner, make payments to the fund in an amount equal to that proportion of ~~[175]~~ **115** percent of the total obligation of the fund during the preceding 12 months, less the amount of the net assets in the fund as of March 31 of the current year, which the total workers' compensation benefits, including medical benefits, paid by each insurance carrier and self-insurer bore to the total workers' compensation benefits, including medical benefits, paid by all insurance carriers and self-insurers in the fiscal year ending in the preceding calendar year.

4 Workers' Compensation; Appeals Board. Amend RSA 281-A:42-a, I to read as follows:

I. There is established a compensation appeals board. The board shall consist of a pool of 33 members, of which 11 members shall represent labor, 11 members shall represent employers or workers' compensation insurers and 11 members shall be attorneys who shall be neutral. Members of the board shall be appointed by the governor and council from a list of nominees submitted by the commissioner. The commissioner shall submit at least 2 nominees for each vacancy to be filled. Any person appointed by the governor and council who is not qualified or who ceases to be qualified in the capacity in which such person is serving on the appeals board shall be replaced by the governor and council. Terms of board members shall be 3 years, except the initial appointments shall be staggered so that no more than 1/3 of the members' terms shall expire in the same year. Members of the board shall have at least 5 years' experience in the area of workers' compensation. As a condition to maintaining eligibility to hear appeals, board members shall have at least 20 hours annually of training and briefing in the area of workers' compensation and relevant disciplines. The commissioner, or designee, with the assistance of the attorney general's staff shall supervise and approve the training. The commissioner shall have the authority to suspend the eligibility of any member of the board who is not in compliance with such annual training requirements, and to reinstate such member's eligibil-

ity upon compliance. *The commissioner may suspend from active participation any board member who fails to render a decision or order within 30 days of the hearing as required by RSA 281-A:43, I(b). The commissioner may rescind the suspension once the board member is in compliance with RSA 281-A:43, I(b).* Appeals from a decision of the commissioner or the commissioner's representative shall be heard de novo by a 3-member panel, composed of an attorney who shall serve as chair, one member representing labor and one member representing employers or workers' compensation insurers. At least 2 like votes shall be necessary for a decision by the panel. The board shall hear appeals, in accordance with RSA 281-A:43, I(b), from the decisions of the commissioner made pursuant to RSA 281-A:43. No person who is an interested party or an employee of an interested party shall participate as a member of the panel. The board shall conduct its proceedings in such a manner as to ensure a fair and impartial hearing.

5 New Paragraph; First Report of Injury. Amend RSA 281-A:53 by inserting after paragraph II the following new paragraph:

III. On or after July 1, 2006, all "First Reports of Injury" shall be filed by the insurance carrier or self-insured employer electronically in a manner prescribed by the department. The commissioner may grant an insurance carrier or self-insured employer a variance if the carrier or self-insured employer documents to the satisfaction of the commissioner that compliance would cause the carrier or self-insured employer "undue hardship" which, for the purposes of this section, means significant difficulty or expense.

6 Workers' Compensation; Notice of Hearing. Amend RSA 281-A:45 to read as follows:

281-A:45 Manner of Giving Notice of Hearing. A notice of a hearing under the provisions of this chapter ~~[shall]~~ *may* be given by giving notice in hand or by sending it by *regular or* certified mail return receipt requested addressed to the employee, the employer and the employer's insurance carrier, at each party's last known residence or place of business. ~~[The superior court shall send by certified mail to the commissioner a copy of each notice of a hearing it sets.]~~

7 Workers' Compensation; Medical, Hospital and Remedial Care. Amend RSA 281-A:23, V(a) to read as follows:

(a) The act of the worker in applying for workers' compensation benefits constitutes authorization to any physician, hospital, chiropractor, or other medical vendor to supply all relevant information regarding the worker's occupational injury or illness to the insurer, *the insurer's representative*, the worker's employer, the worker's representative, *the worker's employer's representative*, and the department. Medical information relevant to a claim includes a past history of complaints of, or treatment of, a condition similar to that presented in the claim. Any person who supplies information in accordance with this subparagraph and with rules adopted by the commissioner shall be immune from any liability, civil or criminal, that might otherwise be incurred for such action. The physician may require evidence from the workers' representative in his or her representative capacity. This authorization shall be valid for the duration of the work-related injury or illness.

8 Fees and Interest. Amend RSA 281-A:44, VI to read as follows:

VI. No attorney representing a claimant shall contract for, charge for, or collect a fee for legal service rendered to the claimant at the department level unless the fee has been approved by the commissioner. In determining the amount of the allowable fee, the commissioner shall consider, among other things, the nature, length and complexity of the

service performed, the usual and customary charge for work of the like kind and the benefit accruing to the claimant as a result of the legal service performed; provided, however, that when an insurance carrier, self insurer, or payor acting on behalf of such carrier or self insurer disputes the causal relationship of a medical bill to the claimant's injury, or whether a medical bill was required by the nature of the injury, and denies payment of such bill, is after a hearing, ordered to pay or reimburse the bill by the commissioner, the [employee] **claimant** shall be entitled to reimbursement of reasonable counsel fees and costs as approved by the commissioner. ***The claimant shall be entitled to reasonable fees and costs pending appeal.***

9 Effective Date. This act shall take effect 60 days after its passage.

2005-0472s

AMENDED ANALYSIS

This bill makes certain changes in the workers' compensation law. Specifically, the bill:

I. Changes the amount insurance carriers and self-insurers pay to the special fund for second injuries.

II. Clarifies when a decision of the commissioner or the compensation appeals board becomes final.

III. Allows the commissioner to suspend a board member who fails to render a decision in a timely manner as required by statute.

IV. Requires First Reports of Injury to be filed electronically, unless it causes a carrier or self-insured employer undue hardship.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. I move Senate Bill 58 ought to pass with amendment. For many years, they have had the secondary fund in the Labor Department. It is a very difficult type of fund to get to and it is over-funded. The first part of this bill reduces the amount of money that the companies are going to pay into it from 175 percent down to 115 percent. There is a large amendment on this bill which fixes some of the areas in the workers' compensation statute such as the Hearing Board is included now that the commissioner can suspend any member of the board if their hearings aren't being rendered on a timely basis. Also there has been some problems with hospitals on who they can release medical information to. This amendment clarifies who is indeed entitled to receive medical information. The Banks and Insurance Committee asks that you support the motion of ought to pass with amendment. Thank you.

Amendment adopted.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

March 4, 2005

2005-0503s

01/09

Floor Amendment to SB 58-FN

Amend the bill by replacing section 9 with the following:

9 Effective Date. This act shall take effect upon its passage.

SENATOR FLANDERS: Thank you, Mr. President. I am passing out a floor amendment which basically says that this act shall take effect upon passage so that the items in the amendment can indeed go into effect now rather than waiting until January. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 66, establishing a commission to study the creation of a northern New England purchasing alliance for small business health insurance. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Barnes for the committee.

Banks and Insurance

February 24, 2005

2005-0468s

01/04

Amendment to SB 66

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the creation of a northern New England purchasing alliance for small business health insurance.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the creation of a northern New England purchasing alliance for small business health insurance.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

II. The committee shall solicit information from the following:

(a) The insurance commissioner.

(b) The governor's office.

(c) The Endowment for Health.

(d) Any other person or entity the committee deems relevant.

III. Legislative members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee's study shall include, but not be limited to:

I. Whether collaboration with our border states to offer a variety of plans which would offer meaningful competition, and choice down to the employee level.

II. A review of high carrier administrative costs, as part of total premium, as it compares to New England and national averages.

III. Examining any necessary regulatory or statutory requirements which may need to be waived in order to facilitate and expedite a pilot project of this nature.

IV. Investigating whether a collaboration is necessary with neighboring states to effect meaningful change relative to border issues.

V. Investigating whether a northern New England stop-loss plan would afford conjoining states an opportunity to negotiate stop-loss premium based on volume for the public purchasing sector.

4 Chairperson. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

2005-0468s

AMENDED ANALYSIS

This bill establishes a committee to study the creation of a northern New England purchasing alliance for small business health insurance.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 66 ought to pass with amendment. The purpose of this study committee would be to study alternative ways to increase choice and competition for small businesses. The amendment changes it from a study commission to a study committee. The Banks and Insurance Committee unanimously asks your support for the motion of ought to pass with amendment and we thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 72, relative to the licensing of public adjusters. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 72 ought to pass. This bill is based on the National Association of Insurance Commissioners' model. It is a consumer protection legislation and it will improve the adjuster/consumer relationship. This is presented at the request of the Insurance Department. The Banks and Insurance Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 77, relative to the review of proposed health care provider contracts. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Gottesman for the committee.

Banks and Insurance

February 24, 2005

2005-0470s

01/09

Amendment to SB 77

Amend the introductory paragraph of RSA 420-J:8, VIII(b)(1) as inserted by section 1 of the bill by replacing it with the following:

(b)(1) Prior to the execution of a health care provider contract, a health carrier shall give to the provider, in writing or in computer format, a complete copy of the proposed contract including:

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 77 ought to pass with amendment. The committee heard from many doctors, hospitals and other healthcare providers and provider networks, all whom testified that when they sign a contract with insurance companies, they are kept in the dark as to what the final contract that is

actually signed looks like. They are not given all the information they need to charge for their services. All they want to do is be sure that the way that they charge is consistent with the procedures required by the insurance companies and that they be paid the amount that they contracted for. It may seem odd that two parties would sign an agreement to provide services and benefits and that the doctor, hospital or healthcare provider would never receive a complete copy of the terms of the contract, but that seems to be what is happening at the present time. With the thousands of codes that have been developed in order to satisfy the health insurance companies' billing procedures, it is almost impossible in certain situations to even try to tell a patient what something is going to cost in advance or performing a procedure, because the doctors, hospitals and other healthcare providers really do not know what is provided for under the contract. Our doctors, hospitals and all medical providers deserve to be provided with copies of these contracts that they have signed up for. There is no excuse for the insurance companies to be allowed to avoid providing current documentation of what the responsibilities of their expected parties to provider agreement are. A concern that was raised by the insurance companies in the testimony in the committee regarding the enormous amount of paperwork that this would require, is solved by the amendment to this bill by allowing the contracts and appendices to be provided in computer format that can easily be sent or transferred to the doctor, hospital or healthcare provider. The amendment will make sure that the insurance companies provide all documents and appendices that pertain to the contracts either in written or computer format. This is the very least we can do for our doctors, hospitals and healthcare providers who tell us all they want to do is to do their job and be provided with contracts for how they are to be paid. The Banks and Insurance Committee unanimously asks for your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 78, relative to payment of health care providers by health carriers. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 78 ought to pass. The committee heard from numerous doctors, hospitals and assorted healthcare providers who are not paid in a timely fashion by the health insurance companies after providing approved, quality health care to their respective patients. The testimony of such a consistent nature from the doctors and other medical providers that it is hard to believe that this conduct by the health insurance companies is just random coincidence. Provider groups tell us that, even if the claim is complete and accurate, that providers have experienced major problems in getting paid in a timely fashion, and some experiencing difficulty in getting paid at all. An example of what can happen is that bills are sometimes accumulated for payment by health insurers putting great pressure on the doctors, hospitals or other healthcare providers. Under present law, the providers are to be entitled to some interest on the balance due. However, as a negotiating tool, the insurance companies, using the strength of their position, force the providers to forgive the in-

terest or to reduce the balances due in order to get paid. This sort of behavior is unconscionable and should not be tolerated. Our doctors, hospitals and healthcare providers deserve to be paid in a timely fashion as set forth under their respective provider agreements. They are not being paid when their money is due and nothing is being done about it. They are told on a daily basis that a claim is not a clean claim and that something in the submission has to be fixed or changed. Most of the time, this is nothing but a delaying tactic that puts additional pressure on the doctors, hospitals and healthcare providers who need to be paid in order to support themselves, their employees and their families. This bill eliminates any confusion of what is required of the medical providers in their submission and sends a message to the insurance companies that they are to pay on completed claims when they are supposed to be paid. If they do not pay, then serious interest penalties will apply. This bill will also insure that insurance companies make automatic payments on any overdue payments, automatic interest payments on any overdue payments, which we learned is a process that is already in existence in Maine and is not at all difficult to manage with the technology available to day. I might add that in the March 3, 2005 of *The New England Journal of Medicine*, there is an article entitled "*Over billing versus Down Coding.*" *The battle between physicians and insurers*, written by Aaron Kesselheim, a doctor, a lawyer and a senior resident at Brigham and Women's hospital as well as with his professor whose name is Troyen A. Brennan. In that article is a review of what is happening in other parts of the country where physicians have taken action against health insurers for the same reasons that we have before us. The allegations of those class action cases on behalf of 800,000 physicians involve the following, some of which are very familiar. Denying valid claims, deliberately denying claims, using undisclosed costs based criteria to assess the medical necessity of claims, proving monetary incentives to claims reviewers to deny or delay payments, implementing claims processing software to adjust automatically by down coding or bundling or denying claims without notice, using overwhelming market power to coerce physicians to accept billing practices, failing to provide a reasonable appeals process for claims. Those cases have been pursued under the RICO Act. The Racketeer Influence of Corrupt Organizations Act. Stipulations had been made and orders had been entered to stop these practices. Under the threat of having to pay triple damages if they lost, some of the health insurers have paid hundreds of millions of dollars in reimbursements that doctors were entitled to be repaid for their services, but who were improperly denied. Our doctors should not have to resort to filing suit against the health insurance carriers to get paid. But if things don't change, then doctors here may have little choice but to do as their colleagues have done around the country. We hope that this bill will ensure prompt payment to our doctors, hospitals and other health care providers and that is why the Banks and Insurance Committee unanimously asks your support on the motion of ought to pass, and I thank you for your patience.

SENATOR EATON (In the Chair): Was that the full testimony? Thank you, Senator Gottesman.

SENATOR GOTTESMAN: The testimony was so compelling that I felt the need.

SENATOR FLANDERS: I believe that the testimony was longer than the hearing.

SENATOR FOSTER: I just want to rise briefly and applaud the members of this body who sponsored this bill. Senator Gottesman did go on for a while, but this was some of the most compelling testimony that I have heard in my time up here. The situations that some of these physicians are facing is really, frankly, outrageous. Months and sometimes years to have bills repaid. That causes stress throughout the whole system. One of the biggest issues that we are all facing is our health insurance costs. If doctors aren't being reimbursed enough and worse than that, they aren't being paid at all, it causes tremendous pressure on the system as a whole. So I applaud the sponsors and I hope this body will support the legislation.

Adopted.

Ordered to third reading.

SB 135-FN, relative to retirement system service and benefits for county corrections employees. Banks and Insurance Committee. Inexpedient to Legislate, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 135 inexpedient to legislate at the request of the prime sponsor, who wishes to wait until the funds are available to address this issue. The Banks and Insurance asks your support for inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 150-FN, relative to application fees for certain bank incorporations. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 150 ought to pass. This legislation would put bank incorporation fees on a similar schedule as other corporations filing with the Secretary of State. The Banks and Insurance Committee unanimously asks for your support. Thank you.

Adopted.

Ordered to third reading.

SB 172, establishing a committee to study a medical fee schedule for workers' compensation. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

Banks and Insurance

February 24, 2005

2005-0469s

01/05

Amendment to SB 172

Amend the bill by replacing sections 2-4 with the following:

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. The committee shall solicit information from members of the medical community, the insurance department, the department of labor, and any other person or entity the committee deems relevant to its study.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study a medical fee schedule for workers' compensation or any other mechanism which would reduce the costs for workers' compensation.

4 Chairperson. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This is a situation that comes up about every ten years in the workers' compensation field. We are one of the few states that do not have a medical fee schedule. We thought that we would refer this to study committee rather than try to enact one to find out what, if any, benefit, a fee schedule would have for the workers' compensation community in New Hampshire. We ask that you pass this. It came out of committee as a unanimous vote. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 191-FN, allowing retirement system members to make additional contributions to their accounts. Banks and Insurance Committee. Ought to Pass, Vote 4-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 191 ought to pass. This bill would allow members of the New Hampshire Retirement System to make additional contributions to their own retirement account so that qualified members could retire with maximum benefits. There are strict limitations on how much a person may contribute. The current and past directors of the Retirement System have said the program is cost neutral and does not jeopardize in any way the financial stability of the Retirement System. I would encourage my fellow Senators to support the ought to pass motion and send this bill to Finance, because there's clearly some misunderstandings, there are some financial implications that need to be discussed and need to be worked out. But I think that today's support of the ought to pass motion, which would encourage and show our support for our public employees, and encourage them to save their own money within the Retirement System so that they may retire with the maximum benefits. The Banks and Insurance Committee asks your support to restore the added contribution program by voting our ought to pass motion. When the time is appropriate, Mr. President, I would like to call for a roll call vote. Thank you.

SENATOR D'ALLESANDRO: Thank you very much, Mr. President. I rise in support of the legislation. Through the good work of Chairman Morse, we had a meeting yesterday with the Retirement Board and went over this situation and I think had a clear indication that it is a rather neutral situation, it isn't a costly item, and that it is a good program for public employees. So we got good testimony. Eric Henry is no longer with us, but we do have our new director. I think questions were posed at the meeting yesterday, we got good answers to those questions. We'll get further answers as we move forward. It just seems to me it is the right thing to do. It is good public policy. It is the right thing to do at this time. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro, during this conversation that you had yesterday in testimony, was there any talk about what this might do to the cities and towns as far as cost effect?

SENATOR D'ALLESANDRO: Thank you for the question, Senator Barnes.

SENATOR BARNES: You're welcome.

SENATOR D'ALLESANDRO: It's always a pleasure to hear from you.

SENATOR BARNES: I'm sure it is.

SENATOR D'ALLESANDRO: I just deem it an honor to get your questions.

SENATOR BARNES: Would you move the question please?

SENATOR D'ALLESANDRO: I certainly will. Should I move it in your direction? There was no negative with regard to the cities and towns. I think Chairman Morse was there and can back me up on that. But there will be a programming cost. There will be an IT programming cost because, when you withdrew this from the system and we purchased a new IT platform, it wasn't in the new IT platform, so that cost will have to be absorbed by the Retirement System.

SENATOR BARNES: Thank you. The answer is that you don't see it as a real added cost to the communities of the state of New Hampshire?

SENATOR D'ALLESANDRO: That is correct.

SENATOR BARNES: Thank you, Senator.

SENATOR D'ALLESANDRO: You're welcome.

SENATOR GOTTESMAN: Thank you, Mr. President. I would like to rise in support of this ought to pass motion. I thought that the testimony was compelling and that this is a benefit that we should be providing that costs us very little. It is an opportunity for people who have dedicated their careers in a way that perhaps does not offer them the same financial satisfaction that they might obtain. But they are smart enough and they want to plan ahead for their final retirement, and I think that we ought to provide this for them. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I rise in opposition to this legislation. There is a similar bill, Senate Bill 326, last year. The bill last year talked about capping the amount of funding that was available or the rates so that it was fluctuating between the high and low. Also in that bill last year, it talked about political subdivisions having to reimburse the state for the contribution of overtime for police officers and firemen. The question was asked for a separation and/or a division and the division wasn't granted. So I voted against it because I didn't believe that communities should be reimbursing the state. However, when you talk about the Retirement System and people that have left the system and leave their money in the system are entitled to a 9.5 percent interest rate. I think that is wrong. I think it is costing us money. It is going to cost the local communities money. I believe it is going to be a 40 percent surcharge, just this year, on the teachers for each community, to bring the contribution levels to where they're supposed to be. And you're right. This year was a 14 percent return. I am certainly not saying that that 14 percent return it should be a give and take. It shouldn't be a guaranteed 9.5 percent. We should say that if it less than 9.5 percent, that is what they should get. If it is more than 9.5 percent, they should get that. But I certainly don't believe that anybody that has left the system and leaves their money in, should be entitled to a guaranteed 9.5

percent rate return. I think that is wrong. None of us here are guaranteed a 9.5 percent return on our investments. There are people that were with Enron and left and have to go back to work because they have no retirement. So to guarantee people retirement at 9.5 percent when John Q. Public, the people who bring us here can't get that same rate. That's wrong. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I rise as my colleague from Manchester did, to explain that I, too, will vote no. I was at the meeting yesterday and I heard what was going to happen to the rates. A 40 percent increase to the teachers. A 28 percent increase fire. These are increases created because the Retirement System doesn't have enough money in it to meet the expected amount of people who are going to retire. Now we are going to allow people to put money in and guarantee them a 9 percent return on their money. This isn't their regular retirement money. This says if you have money to invest, we are going to let you invest it in the state's program and we are going to guarantee you 9 percent, even if we only get 6 percent return. I'll be honest, I was a wise guy yesterday and I said, "I have a million dollars, can I invest it in your system, because if you'll guarantee me 9 percent, I'll take it." This isn't fair to the citizens. It's not fair to the state. Remember, the state pays 35 percent. The state also guarantees that, if there isn't enough money to meet the obligations, it will come out of the general fund. So how can we say to people, go ahead and throw in some money you have to invest on top of your regular retirement. Throw in some more money and we will guarantee you 9 percent even though we can't guarantee that we will get 9 percent. We have been through that. That's the problem. That's why we have a problem in the system. We have had 4 percent returns, 6 percent returns, and nothing says the stock market isn't going to take another dive. Nothing says that there won't be another terrorism act that will cost us all money. So to turn around and guarantee people a 9 percent return on their money, simply because they have money to invest, is wrong, because it's on the backs of the taxpayers, that's you and I. I have as much respect for public servants as everyone else, but I'd like to see them treated the same as we are treated. Thank you, Mr. President.

SENATOR GATSAS: Senator Clegg, wouldn't you think that it would be unusual that when this program ends in June or ended in June, that there were 13,000 applicants, a 500-600 percent increase to participate? Wouldn't you think that there was something unusual about that?

SENATOR CLEGG: I would Senator. I would say that they all found that they couldn't get more than 3 or 4 percent on the outside market, and decided that the state was guaranteeing 9 percent, what a deal.

SENATOR GATSAS: Thank you.

SENATOR ODELL: Thank you, Mr. President. I think that this discussion shows the need for having this bill be ought to pass here as a policy, and that some of these things be sorted out in Finance. I would also say that there are some misimpressions that are coming here today. The reason that the teachers' cost factor is going up so dramatically has nothing to do with the added contribution program. The added contribution program represents about \$12-\$13 million of a \$4.5 billion retirement fund. So the vagaries, the changes that take place in this little area of that fund, that is attributable to added contributions, is absolutely de minimus. Retirement systems all across the country are based upon ac-

tuarial projections. The state of New Hampshire's is based on a ten-year long-term investment plan. If you look at the charts, it is easy to point back to the last couple of years when in fact there was a decline in the balance. But a \$4 billion fund in one year, gained an added \$.5 billion, so it is now up to \$4.5 billion. These are the actual rates of return: 20 percent in 1995. 17.5, 18.6, 17.5, 14.4. Remember, if your added contribution is paying 9.5 and we're getting 18 percent or 18.5, where do you think the excess money goes? It goes right into the fund to benefit everybody, including the communities that put money in there. This is the equivalent of an annuity. Here is somebody that goes to work. We recruit them. We go out of our way to get somebody for the state government at the age of 45 years of age, 50 years of age. Some of us know at 50 you're not done. There's time ahead. If someone goes in at 50, they cannot provide, that is the donor, the communities or the state, cannot put enough money in to get them to maximum fund. They don't have the years of service. So the person says, I get my pay check, I am going to ask them to deduct money. Now someone said \$1 million. The system will tell you how much to put in, maximizing it to how much can go into that fund. So everybody has a different amount. That is why you just heard about the 13,000 applicants that submitted, people that submitted applications. The truth is, that will sort down to a much lower number. Many of those people submitted applications were fully funded. They are going to have the years of service, so they will have their funding fully done. So you can't put \$1million in. This isn't some rip off. If you take this actuarial chart and you go across it, what are you going to find? The assumed rate of return is going to be 10 percent. So whether or not you put it in a separate fund, you use this fund, it is going to be basically at 10 percent. Whether it is George Bush and his issues with Social Security or John Kerry with his issues or whatever the political mix of the people that are interested in this, we want to encourage people to save to maximize their retirement, to be less of a burden and greater contributors to our society. This is a way to do that. This is fair. It is equitable. If you have concerns and issues about the financing of it, then let's send it to Finance. The public policy should be we want to encourage savings. We want to encourage people to maximize their retirement. I would appreciate your support. Thank you.

SENATOR GATSAS: Senator Odell, can you tell me of another retirement system that allows people that leave the system to not have to take their money out and be guaranteed 9.5 percent?

SENATOR ODELL: That's why this should go. I'm not sure that... When you retire you have the opportunity to take this out as a...just as you can take your regular funds that are provided by the contributor at the same time.

SENATOR GATSAS: Can you tell me why somebody would take those funds out if they are guaranteed, guaranteed, 9.5 percent?

SENATOR ODELL: Yes, because they could put it into some other use that they might have that might be paying a higher return. They might be buying an annuity that provides 16 percent. They might want to take it out to make a contribution to a charity, for example, where they might be getting 11, 12 and 13 percent, depending on their age. So absolutely.

SENATOR GATSAS: So that you think that that person that is 50 that may decide to leave the state and this retirement system, that they are going to be making those contributions to charities because they are going to think that they can get it better than a 9.5 percent return?

SENATOR ODELL: Yes, depending on their age and their scale. I mean, that is part of my business is doing that kind of consulting, so yes, often people will do that. They want to make a contribution, they get a tax deduction and then they get a long term benefit, maybe 11, 12 or 14 percent, depending on their age and circumstances.

SENATOR GATSAS: Thank you.

SENATOR GOTTESMAN: Senator Odell, maybe you could clear this up. My understanding was that the trustees of this retirement fund have the power to make changes in the interest rate as was brought out in some of the testimony. Do you have any further information as to whether or not such a change in the interest rate has occurred in the past few years?

SENATOR ODELL: Not to my knowledge. I don't believe any change has been made. But that could be made. I would have no objection if someone said, this program should have a defined benefit of 9 percent, 10 percent, 8 percent. Whatever is acceptable. I think that is a fair question. Is this a good rate of return? Somehow, somehow, an assumption over a ten-year period of investing in conservative securities and other investments, long term, would produce a rate of...the actual assumed rate of return 9.5.

SENATOR GOTTESMAN: Would you agree then, that the power to make these changes is already invoked upon these trustees who are managing this plan?

SENATOR ODELL: Correct. That is my understanding.

SENATOR GOTTESMAN: Thank you.

SENATOR MARTEL: Mr. President, thank you very much. Senator Odell, earlier Senator D'Allesandro mentioned about the fact that the only costs that would be incurred by cities and towns would be to include the new system, which would allow us to get through. Do you have any idea as to how much that would cost to implement this system?

SENATOR ODELL: Senator Martel, you're a good and attentive listener. I should have addressed that. Last year, we ended the added contribution program for a variety of legislative maneuvering and circumstances that took place. There was a grace period that went through December 31. In the period between the time that the law became effective and when the grace period ended, December 31, we had approximately 13,000 application forms, of which I am told, 5,000-6,000 will actually qualify for an added contribution opportunity. Prior to that time, over the last five years the program had been in place, only 900 people had signed up. The cost from the testimony the last time was something like \$3,000-\$5,000 to manage the program then. But, because of the unanticipated consequences of stopping the program, many people said, I ought to get in. They also marketed within the retirement department. So therefore, with all these applications coming in, they estimated it could take a year to sort through all of them and make sure...because each one has to be actuarially adjusted. So there is going to be a new IT platform. That has nothing to do with what we do today because that is a cost that has already been caused by the legislative action last spring, I believe on April 4.

SENATOR MARTEL: Thank you very much.

SENATOR ODELL: Yes, you're welcome.

SENATOR BARNES: Thank you, Mr. President. When I asked Senator D'Allesandro a question, he mentioned the chairman of the Finance Com-

mittee Senator Morse who ran the committee hearing yesterday. Would it be proper if I asked Senator Morse his opinion of what its going to cost the communities, what the possible cost is?

SENATOR EATON (In the Chair): Would you defer to Senator Morse, Senator Odell?

SENATOR ODELL: Yes I would, sir.

SENATOR MORSE: Senator, I think it was pointed out that the cost that we were concerned about was that 40 percent cost of the teachers that is a true cost that is going to go back to communities this year alone. That is not the cost that they are talking about running this program. We don't know the actual cost. They said they were going to submit that shortly, the actual cost of that.

SENATOR BARNES: They don't know the actual cost. I think I have heard from different people that it is going to be very minimal.

SENATOR MORSE: Senator Odell didn't give you a number on purpose because they didn't give us a number yesterday on that.

SENATOR BARNES: If I may continue. When do you think the Finance Committee is going to have that information available so we will be able to vote on something knowing how much it is going to cost our communities?

SENATOR MORSE: I think they anticipated doing that within the budget season. Whether we are going to have that by next week, if this were to come to Finance, I don't believe so.

SENATOR BARNES: Would you believe it is kind of difficult for me to vote on something that I don't know how much it's going to cost and there is a possibility it could be a rather significant amount?

SENATOR MORSE: I would believe that, but I also think the concern is greater than that. We did talk to the director afterwards about the fact that we had a difficult time with COLA's alone. Just with the special fund. And he said, that is going to be at last three years before the fund will be able to consider increases there, because when he brought up the fact that...and I only use teachers because that was the highest one of the 40 percent increase that is coming to the communities of which the state has to put in 35 percent. It was a concern. There was a definite concern there that this money is not available. I don't think anyone on the Finance Committee was judging it about whether or not we were taking something away from the employees of the state, because that is truly not what we were trying to do. I would encourage anyone to save, but I think Senator Gatsas' principle of the fact that whether you or I have the opportunity to get a guaranteed return today from the outside is not there, and I don't think that is fair to the average person in the state of New Hampshire that is footing this bill. Thank you for your question.

SENATOR BARNES: Thank you very much.

SENATOR GATSAS: Senator Odell, can you explain to me if roughly we have 12,000 employees in the state of New Hampshire, why there were 13,200 applicants, which is probably a 10 percent increase?

SENATOR ODELL: Senator Gatsas, thank you for that question because this is a very good example of why we need to have this go to Finance. There are 55,000 members of the Retirement System, not 12,000 state employees. Remember this is the New Hampshire Retirement System.

This isn't the state employees' retirement system, this is the New Hampshire Retirement System. And just as Senator Barnes' question, Senator Gatsas, the cost that we were talking about yesterday, are costs that we are already going to have to pay. If we don't do anything today, we still have to pay them because it takes into consideration all the people that you are talking about here, Senator Gatsas.

SENATOR GATSAS: So those people that may have left the system, could they increase their contribution to that system and be guaranteed a 9.5 percent return?

SENATOR ODELL: Who left the system? I am sorry, I don't understand?

SENATOR GATSAS: An employee left the system and wants to put \$10,000 into the retirement system.

SENATOR ODELL: No, if someone has left the system, they can't participate.

SENATOR GATSAS: They can't make additional contributions?

SENATOR ODELL: No.

SENATOR GATSAS: Are you sure of that?

SENATOR ODELL: No, they are not an employee any longer. That question was answered yesterday in the Senate Finance Committee. Clearly.

SENATOR GATSAS: Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. We have had a lot of conversation about this. Let me refresh my colleagues' minds about years ago when the Retirement System was put in place, when the state never fully funded it, never put their contribution in. And if one says, the corpus hasn't grown, then the corpus hasn't grown because of management or because of people retiring. There was a situation when the state wasn't fully funding it and, as a result, it couldn't grow. But since the Retirement System has been funded, and let's look at the last ten years, because I think that is fundamental, the rate of return has been 10 percent, even when we had a down in the economy. The rate of return was 10 percent. The rate of return last year was 14.9 percent. We, as a body, have opened the Retirement System to every community in New Hampshire because cities and towns were having problems with their retirement programs. The town of Bedford asked us to let them into the system. We then passed legislation which allows municipalities to get into the system. The one exception, the city of Manchester, because we have allowed the city of Manchester to create their own retirement system. We did that in 1973. I was a sponsor of that bill. So I can say to you that this is good public policy. It is good public policy to have your employees putting more money into the fund. The corpus grows. **TAPE CHANGE** The corpus grows at 15 percent, they only get 9 percent. And if the trustees deem that 9 percent is too much, they can reduce it. But it is a good program. It was rescinded last year. I voted against the rescinding last year. I am for the restoration this year because I think it is good public policy. If there is a financial situation, it goes to Finance. And if indeed there is testimony in Finance that there are some negatives to be created, it can be dealt with at this time. But it seems to me all of us can vote on policy and the policy is are people allowed to put extra money in? Why not? I say to you why not? It is good public policy. The debt around here is enormous. Individual debt is enormous. We are asking people to save and it makes sense. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I sit here and I have great respect for my colleagues and yes, this first vote is about policy. And the policy really is should we allow people to invest additional money and guarantee them a rate of return. That is the policy. I heard here today how this is a \$4.5 billion entity and it is doing wonderful. But if it is doing so wonderful, let me ask you this. On July 1 of this year, your community and my community, the employees, the cost of your community is going up 15.4 percent. For teachers, the cost to your community is going up to you, the employer, 40 percent. For your police, it is going up 28 percent. And, for your fire fighters, 6.8 percent. So if the \$4.5 billion fund is doing so wonderful, why is it that they have to increase the cost to each and every one of us? I only hope that when your budgets were done this year, as mine were in my community, that they took into consideration these additional costs and it is not something that is going to be sprung on all of us come July. And, since we have to have these huge increases, I am voting no because I believe my job is to protect not only the fund, but also the taxpayer. Thank you, Mr. President.

SENATOR ODELL: Thank you, Mr. President. Thank you colleagues for the spirited debate this morning. I just want to suggest to you that this is a small part of the overall retirement fund. The Banks and Insurance Committee voted 4-0 with our chairman not voting because he is on the Retirement Board. But I just want to tell you that those...don't be alarmed, and I respect the conversation we had yesterday with the executive director of the Retirement System and Senator Clegg's comments bringing forward those high costs. But please do not attribute those costs to the added contribution program. Those are costs that have nothing to do with it. It has to do with actuarial statistics based upon who is going to be retiring and at what value, that is the cost of those people's retirement package each year. It doesn't have...the amount of involvement with the added contribution program is de minimus.. And with that, Mr. President, thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Clegg, you just heard what Senator Odell said. I am a little confused here. What he is saying is that our communities, this increase that you are talking about, that I am concerned about and most of us are, I think all of us probably are, really has nothing to do with this piece of legislation? Is that what I just heard?

SENATOR CLEGG: Senator, with all due respect to my colleague, the way I look at it is all the money is in one big pot. They look at how much money it is going to cost them every time someone retires. So if we allow people to put in additional money and guarantee them 9 percent, the fund owes them that much money. So the actuarial gurus figure out what it's going to cost us to have all of this money go back out the door. So, as far as I am concerned, when you guarantee somebody a 9 percent on their money, you have to know how much that is going to cost you going out. The reason why we have increased the cost of the employer is because we don't have enough money to keep the system floating and make sure everyone gets what we have promised them at the current rate.

SENATOR BARNES: So the answer is that you feel that this bill, if we pass it, is going to increase the cost to the taxpayers in our communities?

SENATOR CLEGG: Absolutely.

SENATOR BARNES: Thank you very much.

SENATOR FOSTER: Senator Odell, I know the place I work has one of these pension plans. And when they are doing actuarial analysis, they look at what the rate of return has been for the most recent period and they are forced in certain instances to increase contributions under our plan. Does the state retirement system in effect, work the same way, and are some of these costs that are going to the communities based on the most recent period where returns are probably fairly poor? And if rates of return improved over the next five years that could shift around. Is this like most pension plans in that way?

SENATOR ODELL: Senator Foster, thank you. The answer is two-fold. One is that there are a large number of teachers for example, that are going to be leaving the system, therefore they will be taking their benefits. The other part is that the 14.9 percent return of the past year, is calculated going forward. In other words, the benefits of that high return, which will save the communities a great deal of money, won't be recognized until in the future. So right now when we are talking about adjustments, we are adjusting for those couple of years we had very low returns comparatively speaking. But it may be referred to as gurus but there is a whole process that gives you the confidence. That is what this whole system is based upon as is all the retirement systems in the United States. They are based upon actuarial projections based upon returns over a long period of time. So we are not doing anything different in New Hampshire than they are in California and some other places, or may be doing in your own business.

Recess.

Out of recess.

SENATOR BURLING: Thank you, Mr. President. Before I say what's on my mind, I'd just like to remind the Senator from District 17 that the wearing of a pinstripe does not necessarily mean that one is a Yankee fan.

SENATOR BARNES: I appreciate you bringing that up.

SENATOR BURLING: Mr. President, I've heard this discussion. I've been impressed by the passion with which people have expressed their views about this bill. But I just want to say, as a Senator who pays attention to the interests of small communities, if we vote no at this stage on the policy, what we will be saying to the cities and towns of this state is, you don't have a program that will allow you to go out and hire a 45-year-old city manager, a 50-year old fire chief, because we won't have a system under which they can make the kind of contributions necessary to provide for their own retirement. I heard Senator Odell say that early. I wanted to emphasize that, as we address this bill with concern for impact on our communities, voting no on this policy has a more deleterious impact on our communities than any of the financial concerns I have heard mentioned. For that reason, I intend to vote yes and support Senator Odell.

SENATOR LARSEN: I urge this body to send this bill to Finance. There are far too many questions. Whether or not you agree with the policy, there are a lot of questions still unanswered on this bill, and getting it into Finance will permit us time to get the answers to those questions. So I urge this group to consider that. It gives us more time to consider the details of it. Thank you.

The question is on the motion of ought to pass.

A roll call was requested by Senator Odell.

Seconded by Senator D'Allesandro.

The following Senators voted Yes: Johnson, Kenney, Burling, Odell, Roberge, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Boyce, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

Yeas: 13 - Nays: 9

Senator Flanders Rule #42.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 197-FN, relative to captive insurance companies and reciprocal insurers. Banks and Insurance Committee. Ought to Pass, Vote 4-2. Senator Flanders for the committee.

MOTION TO TABLE

Senator Flanders moved to have SB 197-FN laid on the table.

Adopted.

LAID ON THE TABLE

SB 197-FN, relative to captive insurance companies and reciprocal insurers.

SB 219-FN, relative to examinations under workers' compensation. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 219 ought to pass. This bill would stop the payment of benefits if an employee does not attend an examination. A hearing would not be scheduled until they attended the examination. The Banks and Insurance Committee unanimously asks your support for the motion of ought to pass and I thank the body.

Adopted.

Ordered to third reading.

SB 222-FN, relative to cumulative trauma under workers' compensation. Banks and Insurance Committee. Ought to Pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This has been a problem that has been around the workers' compensation community for years and years and years. Basically, what has happened, and I will give you an example, a quick example. Carpal tunnel is a situation that comes on very gradually and I could be working for employee A and I go to the doctor and I have two or three visits, and then I go to employee B and start losing time. At this point, the insurance companies say no, we are not going to pay, we are not going to pay. This has been up to the courts. It has been back from the courts. So what we are saying in this bill is the date of injury on this type is the day that you got your first medical treatment. So the date of injury will be determined by medical information rather than by going to a

hearing. This will save a lot of hearings at the Labor Department. This was put in on behalf of the Labor Department and I feel it is good legislation. Thank you.

SENATOR BOYCE: Thank you. I just have a question on this. I am just thinking back in about 1972 I was working for a company in Denver and I had a back pain and went over and they X-rayed and they said yes, you got a little scoliosis there and you know, you probably shouldn't...they told me to lift things more carefully and so forth. I am curious, if today, I then was working for someone else, and again injured my back, could my current employer, under this, go back to that company 30 years ago and say they're responsible and not my current employer?

SENATOR FLANDERS: No, because you said...you answered your own question, you said "injury". Cumulative is not an injury; it is something that comes on, not caused by an injury. That's the problem.

SENATOR BOYCE: It's accumulative thing though. I mean, that was the original incident. I didn't lose any work that time, but you know, it got worse and worse over the years, and now it is a slipped disc. My current employer is saying, "well gee, I can pass it off to this guy 30 years ago."

SENATOR FLANDERS: No. It is not that type of a disease. In other words, you would have a new injury. If your X-rays at this point showed you did not have a disc, and now you are losing time because you have a disc, completely different situation. You would have had a new injury.

SENATOR BOYCE: Okay. Thank you.

SENATOR MARTEL: Thank you very much, Mr. President and Senator Flanders. This is basically trauma. Dealing with trauma is that there is a differentiation between something that is cumulative which is chronic versus acute. Okay? So this would be dealing with the acute types of problems. Acute trauma rather than chronic which is everlasting.

SENATOR FLANDERS: This bill deals with a type of thing that occurs to lost time that comes over a period of time rather than a distinct injury.

SENATOR MARTEL: It's chronic. Thank you very much.

Adopted.

Ordered to third reading.

SB 94-FN-A-L, prohibiting the taxation of internet access and internet activities under the communications services tax and repealing the local property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 3-2. Senator Boyce for the committee.

SPECIAL ORDER

Senator Boyce moved that we Special Order the following Bill(s) to March 17, 2005 at 10:00 a.m.

SB 94-FN-A-L, prohibiting the taxation of internet access and internet activities under the communications services tax and repealing the local property tax exemption for wooden poles and conduits.

Adopted.

SJR 2, urging Congress to reject the Streamlined Sales Tax Project. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Joint Resolution 2 ought to pass. SJR 2 urges Congress to reject the Streamlined Sales Tax Project. The SST, as it is called, is a plan by sales taxing states to require that all Internet and mail order merchants be tax collectors for them. Currently there is an incentive for companies to establish operations in New Hampshire and not to have to serve as a tax collector for other states. The SSTP would damage our tax free advantage. Therefore, I would like you to join the Energy and Economic Development Committee in supporting New Hampshire's proud no sales tax tradition and vote yes on ought to pass.

SENATOR BURLING: Thank you, Mr. President. I rise to say thank you to the sponsors of this. I can say that this would have missed my attention on any good day. As a result of the presence of this bill, we went on the Internet and looked at some of the, I can only describe it as "puffery", from Washington about this proposal. When you get a look at it, you see it really is a joint venture by all of the states with sales taxes figuring out how to get into the wallets of our citizens. As one of my more astute colleagues also observed, it is probably a predecessor of a VAT, so I thank the sponsors of this and I think that we should unanimously pass this resolution.

SENATOR LARSEN: I only rise to agree with the bill's sponsor and the previous speaker. We did research this sales tax project and it seems to be the long arm of other states trying to get into the wallets of New Hampshire. We are a proud state without a sales tax and I don't understand why we would ever want to go along with this particular project.

Adopted.

Ordered to third reading.

SB 5, establishing a commission to study the state park system. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gallus for the committee.

Environment and Wildlife

February 23, 2005

2005-0426s

04/05

Amendment to SB 5

Amend the bill by replacing section 2 with the following:

2 Membership and Compensation.

I. The members of the commission shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of resources and economic development, or designee.

(d) Six members of the public, appointed by the governor and council, who shall each represent one of the following interests: natural resources, cultural resources, tourism, not-for-profit conservation interests, municipal interests, and motorized outdoor recreational interests.

II. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

Amend the bill by replacing section 4 with the following:

4 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commis-

sion shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Six members of the commission shall constitute a quorum.

2005-0426s

AMENDED ANALYSIS

This bill establishes a commission to study the mission of the state park system and the division of parks and recreation, department of resources and economic development, including the continued efficacy of self-funding the state park system, the limitations on leasing public lands to private interests and the circumstances under which such leasing is permissible, and the development of a long-term capital improvements plan for the state park system.

SENATOR GALLUS: Thank you, Mr. President. I move SB 5 ought to pass with amendment. Senate Bill 5 will establish a commission to study our state park system. Our state parks are some of our most important resources. This commission will provide a forum to review the system, discuss changes and plan for the future. The committee amendment insures that the membership of the commission covers a broad range in interested parties. The Environment and Wildlife Committee voted unanimously in favor of this bill and we hope that you will join us in voting ought to pass with amendment. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of Senate Bill 5. We have a situation now where our parks are self-funded. Our parks are a wonderful resource for the people of the state of New Hampshire. We have gone through great pains to try to come up with revenue sources within the system to enhance activities in the system. But sometimes we have a bad weather situation, the revenues don't meet expectations. There are problems that are created. So I think we should look at the system, look at the magnificence of this system and recognize the fact that we have to do some things that certain venues, that make a great deal of sense, maybe that is an enhanced fee or something of that nature, but parks have to be available to people. They have to be up to speed. They got to look good. They have to present a good situation in terms of the physical plant that we send people to. We know that some of our plants have been in disarray. We really...if this commission can help to improve that situation, I think it is a great idea and, as a result, I support it. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 114-FN, relative to licensing and certification responsibilities under the lead paint poisoning prevention and control program. Environment and Wildlife Committee. Inexpedient to Legislate, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 114 be found inexpedient to legislate. The language in this bill was also included in Senate Bill 153, which this Senate passed a few weeks ago. For this reason, the Environment and Wildlife Committee asks your support for the motion of inexpedient to legislate. Thank you very much.

Committee report of inexpedient to legislate is adopted.

SB 115-FN, relative to the transfer of responsibility for asbestos-related issues from the department of health and human services to the department of environmental services. Environment and Wildlife Committee. Ought to Pass, Vote 5-0. Senator Gatsas for the committee.

SENATOR GATSAS: Thank you, Mr. President. I move Senate Bill 115-FN ought to pass. Senate Bill 115 makes corrections to the statutes in response to the transfer of responsibility of the asbestos program from Health and Human Services to DES last year. The Environment and Wildlife Committee asks for your support for the motion of ought to pass. Thank you.

Adopted.**Referred to the Finance Committee (Rule #26).**

SB 123, relative to the liability of pet shops for the sale of sick animals. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-1. Senator Hassan for the committee.

Environment and Wildlife**February 23, 2005****2005-0434s****06/10****Amendment to SB 123**

Amend RSA 437-B:2 as inserted by section 1 of the bill by replacing it with the following:

437-B:2 Liability Imposed.

I. A pet shop shall be liable for veterinary charges and other costs related to the treatment and care of a pet animal it has sold that was sick or injured at the time of sale and that the pet shop failed to disclose was ill or injured to the purchaser.

II. A pet shop shall be liable for veterinary charges and other costs related to the treatment and care of any other animals owned by the purchaser if such animals become ill as a result of the purchase of an animal and the pet store owner failed to disclose the illness to the purchaser at the time of sale.

III. A pet shop shall not be liable for more than \$1,000 in veterinary charges and other costs for all pet animals under paragraphs I and II.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

2005-0434s**AMENDED ANALYSIS**

This bill makes pet shops liable for certain veterinary and other costs when the shop failed to disclose that an animal it sold was sick or injured at the time of sale.

SENATOR HASSAN: Thank you, Mr. President. I move SB 123 ought to pass with amendment. Senate Bill 123 makes pet shops liable for certain costs when they sell an animal who is sick and fail to disclose the illness to the buyer. The committee heard multiple people testify about the financial burden and the emotional strain resulting from the sale of sick animals. The committee heard particularly compelling testimony about a case in which a pet store owner lied to a purchaser about a dog's existing illness. A dishonesty that resulted in \$2,000 worth of veterinary bills and treatment, not only for the new animal, but for the already owned dog that

the purchaser also had to treat after it caught kennel cough. The bill provides for some remedy to the owner and will provide an incentive for store owners to be more accountable for the animals in their care. I note that present law permits the return of a sick animal within a 14-day window of purchase. This simply gives the purchaser the option of having the animal treated in that 14-day window and billing up to \$1,000 of the veterinary treatment to the pet store. The committee amendment removes the phrase "known or should have known in an effort to reduce legal complications", and also sets a \$1,000 cap on pet shop liability. This is positive legislation that will encourage responsible care for animals in our state and will provide some protection for consumers from unscrupulous pet store owners. The Environment and Wildlife Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 140, relative to the acceptance of in-lieu payments for the preservation of upland areas adjacent to wetland areas. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gallus for the committee.

Environment and Wildlife

February 23, 2005

2005-0448s

08/09

Amendment to SB 140

Amend the title of the bill by replacing it with the following:

AN ACT relative to the acceptance of in-lieu payments for the restoration or creation of wetlands and the preservation of upland areas adjacent to wetland areas.

Amend RSA 482-A:7, II as inserted by section 1 of the bill by replacing it with the following:

II. The department is authorized to accept payment in lieu of requiring compensatory mitigation provided such payment shall be used to restore or create wetlands or to preserve upland areas adjacent to wetlands and to provide funds to support the long-term administration of the program.

2005-0448s

AMENDED ANALYSIS

This bill authorizes the acceptance of in-lieu payments for the restoration or creation of wetlands and the preservation of upland areas adjacent to wetland areas.

SENATOR GALLUS: Thank you, Mr. President. I move SB 140 ought to pass with amendment. Senate Bill 140 will allow an additional option for mitigation required by certain dredge and fill projects by allowing DES to accept in lieu fee payments. Accepting payments will be more effective than compensatory mitigation in many of these cases. The fees will be deposited into a fund that can be used to facilitate large wetland preservation projects. Wetlands are a very important resource to our state and this bill will allow DES to optimize their ability to protect our

wetlands. The committee amendment will insure that the in lieu of fees should only be used for wetland area preservation. The Environment and Wildlife Committee asks your support for the motion of ought to pass with amendment and we thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 93-FN, transferring the electricians board to the department of safety. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-2. Senator Letourneau for the committee.

Senate Executive Departments and Administration

February 24, 2005

2005-0473s

10/04

Amendment to SB 93-FN

Amend RSA 319-C:5, I as inserted by section 3 of the bill by replacing it with the following:

I. The state fire marshal ~~and the board~~, with the ~~[advice and consent of the board]~~ **approval of the commissioner of safety**, shall be empowered to appoint such inspectors as may be necessary to carry out the purposes of this chapter. Any person so employed shall be ~~[located in the office of the state fire marshal and]~~ under the administration and supervisory direction of the state fire marshal.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 93 ought to pass with amendment. Transferring the Electricians' Board to the Department of Safety would allow the board to share resources to become more efficient. This would also give the legislature more control over their budget. The committee heard from the State Fire Marshal and the chairman of the Electricians' Board who are both in favor of the bill. ED&A Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

SENATOR FULLER CLARK: Thank you very much, Mr. President and other Senators. I rise in opposition of the motion of ought to pass from the committee to say that Senate Bill 93 effectively dismantles the Electrician's Board and takes any authority or power away from them. The duties for this board have been done by volunteers who are appointed by the Governor...nominated by the Governor and appointed by the Executive Council. With this legislation, they would be absorbed into a state bureaucracy that is much further removed from the public and from the electricians who still must pay the fees to the state for this board. They will be ill-served, I believe, by this change and we will see a loss of autonomy that will have a negative impact, both on electricians and on the general public. There is further concern that we have heard from the testimony that there is no guarantee that the money that is being raised through electricians' fees will be spent on behalf of the electricians and could be used by the Department of Safety under the authority of the fire chief to do such things as to spend additional monies for the training of the emergency medical services and other issues that

are not directly related to benefiting the electricians. So I'm here to say to you today that I think that this is legislation that is not necessary. We heard no complaints from the public or from individual electricians that the board was failing in its responsibilities. I believe and ask you to vote with me, to defeat the motion of ought to pass from the committee. Thank you.

SENATOR MORSE: Senator Fuller Clark. Thank you. I have two questions if I may? One, George Maihos is from my community and he is the chairman of the board, and he supported the bill. So I guess my question is, if the chairman is supporting it, why aren't we supporting him? My second question would be, this is already set up for a 125 account, which is why Finance wants to see this bill. So they are producing money for the state already through that board. Two things that happen, so?

SENATOR FULLER CLARK: We heard from other electricians who oppose the chairman of the board's position on behalf...and also it is my understanding that, if this money is moved to the Department of Safety, that the additional revenues that are generated from these fees, we will no longer, as the general court, have a decision over how those monies should be spent and they can be spent arbitrarily by the Department of Safety.

SENATOR BARNES: Senator Fuller Clark, I sat in the hearing as did you. My memory is not as good as yours. I don't remember anyone coming in to...any electrician testifying against this. Could you refresh my memory on where that happened?

SENATOR FULLER CLARK: Thank you, Senator Barnes. I misspoke. I did hear from electricians as my constituents, not at the hearing, that they were opposed to this change.

SENATOR BARNES: I was just passed the sign up sheet, and there was one person who spoke against it. That was Mark Hounsell.

SENATOR FULLER CLARK: That is correct.

SENATOR BARNES: There were no electricians. You've cleared that up for me. Thank you very much, Senator.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the bill. I hate to keep saying this because it's like old hat, but I was around here when we created the Electricians' Board. We did that so that we could license electricians so that the consumer wouldn't get ripped off and we would have some quality there. We brought in the IBW. We brought in the public. We brought in everybody and we embraced them and created this board and this board has functioned very well. Actually, the first chairman of this board was from the O'Reilly company in Manchester. John O'Reilly had an electrical contracting company on South Willow Street and Mr. Swartz, who was his general contractor, was the first chairman of the board. The board has proved effective. The board has done a good job. I say to Senator Barnes, my dear friend from Raymond, that probably the electricians were working. It is very difficult for a working man to come up here and testify during the day. It is very difficult. And particularly when jobs are hard to come by or electricians, the work is there, the work's got to be done. If you get called for a job, boy, you got to go to that job. So I think that is a very important point, and a very important issue. From a financial standpoint, it is a 125 percent agency. All that overage goes into the general fund. Now we may not like that fact, because we may not like the fact that they are

paying more, but that money goes into the general fund. That money will amount to about \$118,000 if this piece of legislation is passed that will not go to the general fund. It will create a deficit of another \$118,000 that we are going to have to find some place. I think, if we are going to look at this and we are going to look at this as something that we want to say move off into the future, we say, listen, the electricians' board is overcharging. Let's reduce the license fee. Let's give it back to the electricians. Let's give it back to those people. Hard working people who pay their license fee so that they can earn a living. Let's give it back to them! If that indeed is our will, we ought to do that. We create these 125 percent agencies so that they can help state government. One twenty five agencies are self-sustaining. They don't get any help from the state, yet we provide the licensing in this respect. I think we should keep the licensing board the way it is now and if indeed that money that is produced in the overage is something that we want to consider giving to someone, we ought to give it back to those who paid the licensing fees because, if it is in excess of 125 percent, if it is extremely high, they deserve to get a refund. Thank you, Mr. President.

SENATOR BARNES: Thank you very much, Mr. President. Thank you, Senator D'Allesandro my good friend from the town of...

SENATOR D'ALLESANDRO: Manchester.

SENATOR BARNES: You represent another one to, don't you?

SENATOR D'ALLESANDRO: Goffstown.

SENATOR BARNES: Goffstown. That's the one I want to talk about.

SENATOR D'ALLESANDRO: But I live in Manchester, Senator Barnes.

SENATOR BARNES: Thank you. Would you believe I like your comment about the electricians are out there working? You have been here since 1972 and I didn't get here until the '80s, but I have gone to a lot of...

SENATOR D'ALLESANDRO: I paved the way for you.

SENATOR BARNES: I have gone to a lot of public hearings and I see a lot of working people when they have a real interest show up. Now electricians, apparently they must elect a chairman of their licensing board to represent them, like we represent...we elect the Senate President to represent the Senate out there. So the chairman came in representing all of these hard working electricians who couldn't be here, would you believe, wouldn't he be the representative to those hard working fellows out there working that day that couldn't get here to testify?

SENATOR D'ALLESANDRO: Senator Barnes, with all due respect, the electricians don't elect the chairman of the board.

SENATOR BARNES: Who does?

SENATOR D'ALLESANDRO: The board elects the chairman of the board. There are public members on that board and others. But the electricians don't have an election and elect the chairman of the electrical board. The electricians, if they are IBW, they probably elect their steward or their union representative, something of that nature. But I don't believe, and you can correct me if I am wrong, that they elect the chairman of the electricians' board.

SENATOR BARNES: Often I see Mark McKenzie, who represents a certain union here. Is that correct?

SENATOR D'ALLESANDRO: That's correct.

SENATOR BARNES: He does take time out from his job that he is working at to come in here and represent his people.

SENATOR D'ALLESANDRO: To answer your question, Mark McKenzie was a fireman in Manchester, who is now retired. As a result of him being retired, he is the president of the AFFLCIO and he has time on his hands.

SENATOR BARNES: Well, I have seen him over the number of years that I have been here, and when he was still fighting fires in Manchester.

SENATOR D'ALLESANDRO: Well he put his time in and did a good job as a firefighter. I respect that. And if he had extra time to come up here, that is a wonderful tribute to public service. So thank you very much. Thank you, Senator Barnes, for making Mark McKenzie our hero today. Thank you. Thank you, Mr. President.

SENATOR FULLER CLARK: I would just like to ask Senator Barnes a question. Senator Barnes, is it not true that you just stated that Mark Hounsell, for the NH State Building and State Construction Trades Council and the IBEW, was here on behalf of the electricians and objected to this bill?

SENATOR BARNES: He as their lobbyist, he wasn't the electricians', it was the building. I have the sheet right here. The way Mark Hounsell, lobbyist Mark Hounsell signed in, New Hampshire Building Trades and IBEW Local 490. You are correct.

SENATOR FULLER CLARK: Thank you.

SENATOR CLEGG: Thank you, Mr. President. The bill is at the request of the electricians' board. It is also at the request of a lot of the electricians. I'm still involved in the industry. I still know a lot of the players. I still know a lot of the electricians out there. It is about efficiencies. It is about being able to spend less money, which will lower the cost of their licenses by moving in with fire and safety. They can share resources. They can share the computer systems so they don't have to buy a new system. They can share space so they can get out of the building they're in now. They can share all kinds of things and, as a result, the 125 percent of the costs goes down. Now does the bill have a little bit of a problem? Sure. There is \$118,000 not going to go to the general fund. But that's why the bill was requested to go to Finance. So we can fix that. But this is a request of a group of people who have said, let us become more efficient. I have people saying, let's not become more efficient. Let's keep it the way it is and I have no idea why they would want to do that. The chair of the board came and testified and said and I quote him, "I like this bill because it was my idea." He brought it before the board and the board liked it and said it made sense. We went to the Fire Marshal's office and the Fire Marshal said well technically I've had control of that board somewhat anyway, so yes, bring them in. We are not looking to make the Fire Marshall's Office any more money. What we certainly are looking to do, as the Senator from Manchester said, and lower the cost of the license, because it is tough to work out there. And if we have a problem with them charging more than 125 percent, then we ought to change the law that says that anything over 125 percent has to be given back because right now, the information that I have, the electricians' board is charging closer to 145 or 150 percent because they thought they were going into bigger quarters. Do we have control over the money in the budget? You bet. We still control the Fire Marshal's Office. We control those line items. We still decide how much money they spend. We still get to look at it. One person representing the union came in and said

I don't like the bill. Everybody else that I have spoken to that works the industry says thank you. So why not give them what they are asking for? Especially when they say "let us help government operate more efficiently." Thank you, Mr. President.

SENATOR GATSAS: Senator Clegg. Thank you. Senator, is it my understanding that you're saying that Finance is going to look at it so those general fund dollars will remain general fund dollars if this body moves it forward to Finance?

SENATOR CLEGG: I believe the will of Finance is to make sure that the general fund doesn't lose money.

SENATOR GATSAS: So it will be amended there so that those funds stay in the general fund dollars?

SENATOR CLEGG: That would be my intent.

SENATOR GATSAS: Thank you.

SENATOR CLEGG: Thank you.

SENATOR FOSTER: Senator Clegg, section IV of the bill, and unfortunately I haven't been able to grab the statute, says the "board with the approval of the commissioner shall adopt rules pursuant to 541-A." Normally that is all their rulemaking authority, which is really all their powers. I don't know where this is a limited situation, but can you tell us, in other words, comments, that this takes a lot of the powers of the board away? It would seem to me that it probably does, because if the commissioner didn't like something he would say you can't do it.

SENATOR CLEGG: Well actually it gives them more power than they have because currently the electricians' board can't make rules without coming to the building code review board. Now they get to circumvent the building code review board and, with the approval of the commissioner, go directly to JALCAR.

SENATOR FOSTER: I don't see anything about the building code review board in here being stricken, so I am not sure. Where would that be?

SENATOR CLEGG: Well, right now the electricians' board falls all by itself and falls under the building code review board. Here it falls under the commissioner of safety. Here you are passing the law that says that they can make rules with the approval of the commissioner of safety, pursuant to 541-A.

SENATOR FOSTER: So, he'd have veto power though over any rules or changes they want to make as I read this, is that... Am I reading that correctly?

SENATOR CLEGG: I would say that the commissioner of every department has some say over what rules go through their department, yes.

SENATOR FOSTER: Thank you.

SENATOR FULLER CLARK: Senator Clegg, on the bill on line 26, does it not say that "Fees collected shall be deposited in the Fire Standards and Training and Emergency Medical Services Fund, established by RSA 21-P:12-d, and used for the purposes of supporting the activities of the bureau"? How is that going to help the electricians?

SENATOR CLEGG: Well, when we get it to Finance, we will amend that so that it says and be used for the purposes of the electricians' board only. So we will make sure that the funds are still only used for the purpose in which they are used now and not for any other purpose.

SENATOR MORSE: Senator Clegg, just to clarify your point. What you're basically saying is the first...the 100 percent will stay with the electricians' board; anything above that we're going to try to fix in a different direction?

SENATOR CLEGG: That's correct because the 25 percent rule is to help pay the state administrative cost.

SENATOR GATSAS: I think I need a question of Senator Clegg. Senator Clegg, I am just looking for a clarification of my first question because the answer that you just gave was different. The question that I asked you was, if this body moves it onto Finance, would that \$118,000 remain the general fund as it today? I believe your answer to me was yes. Now you just gave me a different answer that it would go back to the electricians.

SENATOR CLEGG: I think that Senator Morse's question to me clarified that the original 100 percent is going to be used for the electricians. The 25 percent is the \$118,000 which we would work to keep into the general fund.

SENATOR GATSAS: Okay.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I think a couple of things should be considered by the body. If we want to make the electricians' licensing board more efficient and effective, we can do that. That is very simple. We don't have to transfer them any place. We can make them more efficient and we can make them more effective. That is point number one. I think point number two about the money. Everything over 125 percent is **TAPE CHANGE** they can do that now. They can become more efficient and effective. It seems to me that, if we create a board and we say, you're supposed to do the following things, and we find that you're not being as efficient, as effective, as we want you to be, we ought to tell you, "be more efficient and effective or we'll do something about the composition of the board." Efficiencies are very important in state government. We run a very lean government. But we also created a lot of 125 percent agencies. I think that this particular situation has been a good one. I wish we had more work for electricians. I wish we had more licensed electricians because we are losing those jobs. We are losing those jobs around the state. So, if indeed the question is they are paying more than they should, let's give them a rebate. We don't have to move them anyplace, we can give them a rebate. We do that all the time. If we pay more in our income taxes, we put in for a income tax return. We ought to do that in this situation. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. Just so we are not confusing issues. First of all I support the transfer. The thing that I had asked for because this originally wasn't going to go to Finance, was that this come to Finance. The electricians' board has presented a budget. I support their budget. What I don't support and, the reason we created 125 agencies, is that the difference go away from the general fund. So it would be our intent to get this into Finance and have that difference stay in the general fund. I don't believe anyone's suggesting that we eliminate 125 accounts because, if we do that, we are going to have a greater hole in the general fund. But the true issue is should we transfer this to that department and I believe that should happen.

SENATOR CLEGG: Thank you. I heard my colleague talk about if boards weren't operating efficiently that we would tell them how to operate more efficiently. I greatly appreciate the fact that this board came to us and

said we are not efficient. Let us merge over to fire safety so we can become more efficient. I have great respect for somebody who comes to us and doesn't wait for us to find out what is wrong, and says, this is how to make it better. That is the bill they presented here. They said to us, here is how we make government better. I ask that you support not only them, but the committee.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 97-FN, abolishing county departments of corrections and authorizing the department of corrections to contract with the counties to utilize former county correctional facilities as state facilities. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. I move that Senate Bill 97 be inexpedient to legislate. We realize that this bill was put in with good intentions and good thoughts. We had interesting testimony from both the county corrections people as well as the state corrections people. I think the thing that stuck in my mind the most was that these are two very distinct type of process. The state prison being one type of process and the county being much more people in and out, being transported around and again, very completely different. We heard testimony from Rockingham County prison where they were talking their budget is \$8 million. This is one county. The finances of the thing would be completely difficult to figure out and, based upon the testimony and the lack of interest of the corrections people wanting to do this, and the problems that we would see in the difference of the style and the type of treatment they get, we voted unanimous inexpedient to legislate. Thank you.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the adoption of the motion on the floor. I didn't go to Dartmouth, but I sure understand their motto. On this issue, after eight years, I am truly vox clamantis indeserto (a voice hollering in the wilderness). But I mean a very serious point. We get ourselves elected to these offices and we talk about our concern for the property taxpayer and we talk about our concern for the counties and the towns, and we talk about efficient government. As we stand here this year, we see commissioners who are attempting to compress state government into smaller and smaller units with less and less responsibility. The remarkable thing is that, when you look at corrections in the state of New Hampshire, you see what a lie we're telling each other. We are 1.2 million people living in a little New England state and we have eleven separate corrections departments. Eleven. I submit, Mr. President, that there is no question that the power to lock a citizen up and put them behind bars is a state function. It is a function which our constitutional forefathers and our Constitution as a document, attributes to the power of the state. Why then do we have eleven separate corrections departments? Why not one corrections department which provides both misdemeanor incarceration and pre-trial incarceration through a jail and felony incarceration through a state prison? Well, the answer is we need to tap into the real estate tax in order to pay for what we're doing. There is no other rational explanation for a system in which we have eleven separate correctional authorities. Now evidence was presented at the committee hearing which I apologize, I was not present at. The evidence was that county jails are more efficient, and

the proof offered was the efficiency as found in the fact that the per annum cost of incarcerating somebody in a county jail is less than in the felony correctional facilities operated by the state. Well, of course they are. Throughout the country, jails operate more efficiently, that is to say at a lower overall cost than felony post-conviction correctional facilities. That is true across the country. It has to do with the nature of the facility. The services offered or not offered, and the nature of a jail versus a slammer, a big house. Well, the point that I wanted to raise here and I know I am not going to win it today, and maybe I am not going to win it ever, I want to raise the challenge that, if we say that we believe in efficiency in government, and if we want to start thinking outside of the box, that wonderful phrase, then sooner or later we are going to have to start challenging the way in which we provide major services. Corrections is a service, falls within the ambience of the state government. It is not a municipal or county function unless we say it is. And, if we had the courage to completely rethink the way we run corrections, we might wind up with a system in which we have three post-conviction facilities. A maximum security in Berlin, a medium security in Concord, a women's prison some place, and a smaller number of jails. Why a smaller number of jails? Because jails were a creature of the nineteenth century. They were a response to our need to find a place to put people prior to trial and for misdemeanor convictions up to a year. County government worked because we got people to those facilities by horseback. You needed to be able to move folks within a limited range of miles, but every one of us now knows because we have seen county budgets, we have sheriffs. Every sheriff in this state, with two or three vans, five or six cruisers, moving prisoners around this state like it were a huge hide the pea game. I mean, our counties expend tremendous amounts of money moving folks around. At some point, Mr. President, I hope we will have the courage to look at the system and start to ask questions. I hope we will have the courage to say to our property taxpayers "we don't need you to pay for a state function with your property tax dollars anymore. We are going to figure out some other way to do it. We are going to have one corrections function and we're going to do it as we ought to do it, through the state government." Thank you, Mr. President for your tolerance and patience.

SENATOR CLEGG: Senator Burling. Thank you, Senator. Are you suggesting that we take a look at abolishing not only the county jails but the county sheriff's department, county attorney's office and get rid of the archaic methods that we have now since we have state troopers in the Attorney General's Office?

SENATOR BURLING: Thank you for that wonderful question. I'm not sure you're going to like my answer.

SENATOR CLEGG: I just might.

SENATOR BURLING: Yeah, well there are some of us, after a second beer or other libation, who look in the mirror and say what would happen if the corrections function were all at the state level? The sheriff's function, which is not primarily either a taxi service for prisoners or a service of process service, which you could either do with Fed Ex or the Internet. What you then have is the issue of county prosecutors who maybe ought to be under the control of the Attorney General. That is the kind of questioning I think we need to undertake one of these days. I have been doing it for a while.

SENATOR CLEGG: I did like your answer. See?

SENATOR LETOURNEAU: Senator Burling, I was only going to ask if you could tell me what the approximate cost would be to the state government should we assume the responsibility of the jails, but Senator Clegg's question raises even a larger question. Do we have any idea what the costs would be to the state if we were to assume the county sheriffs and the county attorneys and the county corrections?

SENATOR BURLING: Thank you so much for the question. The answer obviously is no. What I am trying to do is challenge us as political leaders to begin the process of looking for those answers. There is nothing writ, either up on the pictures on that wall or in our Constitution, which says we have to do things in a fashion that was conditioned by the reliance of our fore bearers on the horse. We aren't moving anybody around by horseback anymore. Sooner or later we need to look at the impact that all this is having on our local property taxpayers. That is all that I am begging us to do.

SENATOR LETOURNEAU: Thank you.

Committee report of inexpedient to legislate is adopted.

Recess.

Out of recess.

SB 152-FN, relative to audits by the department of revenue administration of enhanced 911 charges. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

February 24, 2005

2005-0461s

09/01

Amendment to SB 152-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to audits by the department of revenue administration of enhanced 911 charges and relative to the confidentiality of information collected by the department of safety regarding the surcharge for the enhanced 911 system.

Amend the bill by inserting after section 4 the following and renumbering the original section 5 to read as 6:

5 New Paragraph; Confidentiality of Proprietary Information. Amend RSA 106-H:9 by inserting after paragraph II the following new paragraph:

III.(a) Notwithstanding any other provision of law, and except as otherwise provided in RSA 82-A, the records and files of the department, related to this section, are confidential and privileged. Neither the department, nor any employee of the department, nor any other person charged with the custody of such records or files, nor any vendor or any of its employees to whom such information becomes available in the performance of any contractual services for the department shall disclose any information obtained from the department's records, files, or returns or from any examination, investigation, or hearing, nor may any such employee or person be required to produce any such information for the inspection of any person or for the use in any action or proceeding except as provided in this paragraph.

(b) The following exceptions shall apply to this paragraph:

(1) Delivery to the surcharge collector or its representative of a copy of any return or other papers filed by the surcharge collector.

(2) Disclosure of department records, files, returns, or information in a New Hampshire state judicial or administrative proceeding pertaining to administration of the surcharge where the information is directly related to an issue in the proceeding regarding the surcharge under this section, or the surcharge collector whom the information concerns is a party to such proceeding, or the information concerns a transactional relationship between a person who is a party to the proceeding and the taxpayer.

(3) Disclosure to the department of revenue administration of records, files, and information required by the department of revenue administration to administer the communications services tax pursuant to RSA 82-A.

2005-0461s

AMENDED ANALYSIS

This bill allows the department of revenue administration to audit telephone companies for enhanced 911 charges when they are audited for other state fees and taxes.

The bill also requires the department of safety to keep confidential and privileged any information it obtains in the administration of the enhanced 911 surcharge.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 152 ought to pass with amendment. This bill would allow the Department of Revenue Administration's auditors to perform 911 audits for the Department of Safety. Since the auditors would already be performing audits in businesses, this would not be an extra burden on those businesses. It is a cost and time saver. The amendment addresses the issue of confidentiality of those records between the department and is to make sure no information is given away that does not have the authority to do so. The ED&A Committee unanimously asks for your support for the motion of ought to pass with amendment. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 160, providing that the state board of education shall appoint the commissioner, deputy commissioner, and division directors of the department of education. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 4-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 160 inexpedient to legislate. Although written with good intentions, the committee feels that the authority for appointing commissioners should be uniform, and all appointed by the Governor and Council. If we give the authority to the State Board of Education, who is to say that other departments will want the authority to appoint their commissioners, and this is why the ED&A Committee asks your support for the motion of inexpedient to legislate and thank you.

Committee report of inexpedient to legislate is adopted.

SB 211-FN, relative to pharmaceutical marketers. Executive Departments and Administration Committee. Ought to Pass, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. Mr. President, I move Senate Bill 211 ought to pass. This bill would require pharmaceutical companies to report gifts over \$25. This in no way is trying to eliminate gift giving, but to show the state how much each company is giving. They will not have to report to whom they gave the gift and this has nothing to do with sample drugs. The committee feels that this is an important step towards bringing awareness to the state. Thank you.

Adopted.

Ordered to third reading.

SB 108-FN, relative to newborn screening tests and fees for newborn screening tests. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Health and Human Services

February 23, 2005

2005-0445s

01/10

Amendment to SB 108-FN

Amend RSA 132:10-a, I as inserted by section 2 of the bill by replacing it with the following:

I. The physician, hospital, nurse midwife, midwife, or other health care provider attending a newborn child shall test a newborn child for ~~[metabolic]~~ **heritable** disorders. Such tests shall include, but not be limited to, phenylketonuria, galactosemia, homocystinuria, maple syrup urine disease, and hypothyroidism. ***Additional disorders shall be added to the newborn screening panel based upon, but not limited to, the following considerations:***

(a) The disorder is well-defined with a known incidence.

(b) The disorder is associated with significant morbidity and/or mortality.

(c) The disorder can be detected with a screening test that is ethical, safe, accurate, and cost-effective.

(d) Effective treatment exists for the disorder, and that early treatment, meaning before the onset of symptoms, is more effective in improving health outcomes than later treatment.

SENATOR MARTEL: Thank you very much, Mr. President. We're passing around a definition of all the special diseases that are being treated under this newborn screening. It is coming around now. So I thank you, Mr. President. I move that Senate Bill 108-FN be ought to pass with amendment. The effectiveness of newborn screening is increasing all the time. The bill, as amended, will allow the Department of Health and Human Services to more rapidly respond to new medical advances and assure that the state gets best value by specifying that screening services are competitively bidded. Senate Bill 108 will also preserve accountability by requiring our Governor and Council approval. The amendment clarifies that the information collected is used strictly for the purpose of screening programs and the committee recommends ought to pass with amendment on Senate Bill 108. I thank you, Mr. President. Some of the...I would just like to name some of these diseases that you have in front of you. "Phenylketonuria", "Maple Syrup Urine Disease", "Hypothyroidism", "Galactosemia" and finally, "Homocystinuria". That is as defined. So if anyone's interested in looking at what they are, please do. I thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 163-FN, establishing the New Hampshire pharmaceutical assistance program. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Health and Human Services

February 24, 2005

2005-0477s

01/09

Amendment to SB 163-FN

Amend the section heading and the introductory paragraph of RSA 161-K:2, I as inserted by section 1 of the bill by replacing them with the following:

161-K:2 New Hampshire Pharmaceutical Assistance Program; Eligibility; Enrollment.

I. The commissioner is authorized to establish a New Hampshire pharmaceutical assistance program which shall be administered by the department. The program shall coordinate prescription drug coverage with the prescription drug benefit under the federal Medicare Modernization Act. Persons eligible for the drug benefits under this program are as follows:

Amend RSA 161-K:3, III as inserted by section 1 of the bill by replacing it with the following:

III. Preliminarily enroll or re-enroll beneficiaries into a preferred Medicare Part D plan, or disenroll such beneficiaries from another non-preferred PDP with an "opt out" provision for the individual. Individuals that opt out of the preferred PDP shall remain enrolled in the program unless they choose to disenroll from such program.

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect upon its passage.

2005-0477s

AMENDED ANALYSIS

This bill authorizes the commissioner of the department of health and human services to establish a New Hampshire pharmaceutical assistance program which shall coordinate prescription drug coverage with the prescription drug benefits under the Medicare Prescription Drug, Improvement and Modernization Act of 2003. This bill grants the commissioner of the department of health and human services rulemaking authority for the purposes of the bill.

SENATOR MARTEL: Thank you very much, Mr. President. Before we begin, I would like to thank Kristy for making all those copies and getting them out for me, and getting the definitions. Thank you, Mr. President. I move Senate Bill 163-FN ought to pass with amendment. Beginning January 2006 the prescription benefit under Medicare Part D will replace New Hampshire's current Medicaid prescription drug benefit for its dual eligibility population. The purpose of Senate Bill 163 is insure a smooth transition so that people do not lose the prescription drug coverage they currently have. Senate Bill 163 will allow the Department of Health and Human Services to maintain a relationship with drug companies in effect creating a wrap-around program, current beneficiaries,

to soften the effect of the claw back tax on the state. The amendment clarifies the process for enrollment and makes the bill effective upon passage. The committee recommends ought to pass with amendment on Senate Bill 163 and I thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I wonder if Senator Martel would accede to Senator Clegg for a question?

SENATOR MARTEL: Yes.

SENATOR D'ALLESANDRO: Senator Clegg, under this piece of legislation, will we still, as a state, have the ability to negotiate for discounts? As you know, in the last budget session what we did was we looked at that discount as a significant revenue producer for us. Are we still going to be able to do that even though under the federal legislation you can't negotiate for discounts?

SENATOR CLEGG: Yes. I believe we will and I will speak to the issue in a minute.

SENATOR D'ALLESANDRO: Thank you. Thank you very much.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of Senate Bill 163. The bill, as amended, is an important piece of authorizing legislation and will allow the state of New Hampshire and the Department of Health and Human Services to address the critical healthcare and budget issues that we face under the Medicaid Modernization Act, particularly Medicaid Part D. To answer Senator D'Allesandro, if we don't pass this legislation, New Hampshire's current Medicaid Prescription Drug benefit for eligible population will be replaced by the federal prescription drug benefit, under Medicare Part D on January 1, 2006. This will come with a burden for the state of New Hampshire, determining eligibility and enrollment, preventing gas and prescription drug coverage, for handling the unintended medical costs of shifting from a Medicaid open formulary to perhaps a Medicaid closed formulary. The burden will be coupled with a negative impact on our cash flow from the current supplemental rebate program as dual eligible's are removed from the state Medicaid rolls. If we do not pass this legislation, I am sorry, if we do pass this legislation, we will be taking critical steps to maximize the benefits and minimize the hardships on the state of New Hampshire. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

SENATOR LARSEN: I rise to applaud the support that this bill, I hope, is receiving from this body. Senate Bill 163 is beginning the steps which I think will help to bring a prescription drug benefit to those in the dual eligible population and to provide drug options or what they call an open formulary. But it also opens some windows of possibility for other benefits which we can offer to the citizens of New Hampshire who are struggling, those who struggle most, the low income, with their drug costs. I am very excited to see Senate Bill 163 with an ought to pass motion and encourage everyone to support this bill. Thank you.

SENATOR D'ALLESANDRO: I, too, support the passage of the bill. I think it should be made clear to all of my colleagues that the discount that we have been receiving is significant in our budget process. If we didn't do something to maintain that, under the federal legislation, you can't negotiate for discounts. So our ability to negotiate prevents a significant deficit in our budget as we move forward. Again, for those of us

who look at that, the amount of money is enormous. We are talking about \$13-\$14 million in terms of what we received in discounts. I think it was really Senator Clegg who said in our Finance meetings last year, "for the first time we recognize that as income." I think that's important. That used to go by the boards on the side basket, when people didn't understand how significant that discount policy was. I think it is very important to pass the piece of legislation, but more important that we be consistent in terms of getting those discounts because they help the people of the state of New Hampshire. Thank you, Mr. President.

Adopted.

Referred to the Finance Committee (Rule #26).

SCR 4, supporting federal funding for Lyme disease research. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Health and Human Services

February 23, 2005

2005-0443s

01/09

Amendment to SCR 4

Amend the resolution by replacing the 5th and 6th paragraph after the title with the following:

Whereas, the lack of early detection of Lyme disease may result in unrecognized illness and persistent symptoms of Lyme disease infection; and

Whereas, further research and health care provider education about Lyme disease laboratory testing is needed; and

SENATOR KENNEY: Thank you, Mr. President. I move that Senate Concurrent Resolution 4 ought to pass with amendment. The New Hampshire is twelfth in the country with regard to reported cases of Lyme disease, yet no standard exists to detect whether someone has the disease. Issues of education and research require more examination in federal funding in order to address Lyme disease. The amendment removes the word "chronic" from the definition of Lyme disease at the request of the state epidemiologists and the committee recommends ought to pass with the amendment on Senate Concurrent Resolution 4. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 40, permitting special school district meetings to be held in conjunction with the biennial election in certain school districts. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

Internal Affairs

February 23, 2005

2005-0456s

03/01

Amendment to SB 40

Amend the bill by replacing section 1 with the following:

1 Special School Meetings; Exception to Prohibition. Amend RSA 197:2 to read as follows:

197:2 Special. A special meeting of a school district shall be held whenever, in the opinion of the school board, there is occasion therefor, or whenever 50 or more voters, or 1/4 of the voters of the district, whichever is less, shall have made written application to the school board therefor, setting forth the subject matter upon which action is desired. ~~[In no event shall a]~~ **No special school district meeting *shall* be held in conjunction with the biennial election, *except when a special school district meeting has been approved by the court and a school district has adopted the official ballot referendum form of meeting pursuant to RSA 40:14.***

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. This bill has to do with special elections. As some of us know, special elections can be very expensive. Basically, Senate Bill 40 allows SB 2 towns to hold special elections on election day so they don't have to open up polling space during...on its own. Under this bill, the law will prevent regular meetings to be held on election day because the safeguard in the bill is that Senate Bill 2 towns cannot have this meeting unless it is court approved. We feel that we have put the safeguard in and we've allowed towns to save money. In fact, in my town, we have a representative just resigning, we are going to have to have a reelection in three towns which will be a primary and a general election which all will be special elections, which were not put in the budget and they can be very expensive when you're paying the moderator and the supervisors and so forth. We feel this is a good piece of legislation and were asked to put it in by a moderator and some selectmen in a town that were having special elections and found the cost to be more than they thought they had to spend. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 71, relative to amending warrant articles in towns that have adopted the official ballot form of town meeting. Internal Affairs Committee. Inexpedient to Legislate, Vote 4-2. Senator Bragdon for the committee.

MOTION TO TABLE

Senator Bragdon moved to have SB 71 laid on the table.

Adopted.

LAIID ON THE TABLE

SB 71, relative to amending warrant articles in towns that have adopted the official ballot form of town meeting.

SB 193, relative to Occupational Safety and Health Administration Certification requirements for state contracts. Internal Affairs Committee. Inexpedient to Legislate, Vote 3-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 193 be found inexpedient to legislate. Senate Bill 193 would require bidders on certain state and local work contracts to certify that all employees have completed an Occupational Safety and Health Administration safety course. While the goal of improving safety is certainly laudable, we fear that the real result of this bill will be increased cost for state and local projects. The Internal Affairs Committee asks for your support on the motion of inexpedient to legislate. Thank you.

SENATOR GALLUS: Thank you very much, Mr. President. Members of the Senate, I ask you to vote no on inexpedient to legislate on this piece of legislation. I have a floor amendment that I would like to put forth with an ought to pass recommendation. I think it will clear up some of the concerns the committee had. You will notice that the committee vote was 3-2, so I think it is something we should consider. I would appreciate a large no vote.

SENATOR CLEGG: Senator Gallus, does your amendment still mandate that private companies have to take a class?

SENATOR GATSAS: Yes. An hour of OSHA Safety Class.

SENATOR CLEGG: Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. I also ask my fellow Senators to vote down the ITL motion on this bill. I know that it seems like this could be quite overwhelming for certain companies or small or large, by having OSHA regulations and everything certified. The issue is that the training that these people will go through is instrumental, okay, in understanding safety in the work place. Also, it will over a long period of time, it may reduce insurance costs for those companies as well as for the individuals in lost time at work. I used to have to deal with OSHA an awful lot. We used to think sometimes they were kind of a pain, but they always seemed to come and do the right things for employees. They were very strict about what they did. So I ask my fellow Senators to please vote no on this inexpedient to legislate and move this along so we can have an ought to pass motion and vote yes on the amendment. Thank you very much, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I rise in support of the committee recommendation. I would like to point out to the members of this chamber that we already mandate that every company have a safety committee, every company have safety meetings. What this bill would do, even with the amendment, is limit the amount of people who are going to bid on state projects. We keep giving them mandates that they don't need. We keep requiring them to spend more money in order to bid on state projects. They're not going to bother. Ten hours for every employee means that yes the class is free, but the employer still has to pay their employee for those ten hours. They are probably getting the exact same training already from their safety committee. Passing a bill that mandates people do more classroom time on safety is nothing more than to limit the amount of people who will bid, create bigger financial problems for the state and all of our projects, and put more of our regular workers out of work. So, I suggest we leave what we have now, which is that every company is required to have a safety committee, required to have safety meetings, and we don't need to mandate anymore classroom time. Thank you, Mr. President.

SENATOR GATSAS: Senator Clegg, is it your recollection that companies with less than five employees must have safety committees?

SENATOR CLEGG: With less than five, no.

SENATOR GATSAS: Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I rise in opposition to the inexpedient to legislate. I come from a field where I have seen stupidity after stupidity of people on the job, not here. Senator Bragdon has expressed his concern. Not here, of course. Where construction workers who are put in charge of being on a safety committee do not do their

job so that other people never learn what the proper way to perform a function is. We are talking about one of the most dangerous aspects of our life, construction in all sorts of buildings. Without the proper training, this is a pathway to injury, death and failure. I would urge you to vote against the inexpedient to legislate.

SENATOR CLEGG: Senator Gottesman, in your line of work, you have seen a lot of people do stupid things. Have any of them held degrees or have they all just been high school drop outs?

SENATOR GOTTESMAN: Gee, I think I have seen all sorts of stupidity across the board?

SENATOR CLEGG: So the amount of education really had no effect on people doing stupid things?

SENATOR GOTTESMAN: No. I think the answer to the question really is, if someone has never been exposed to the kind of training that they should be exposed to, and learn how things are supposed to be done, pursuant to OSHA guidelines, then they will never know. The fact that some people think they know what the right way to do a job is, is not always the case. I am really in favor of them getting as much training as possible to perform the functions in accordance with approved guidelines.

SENATOR CLEGG: Thank you.

SENATOR LARSEN: I rise to oppose the motion of inexpedient to legislate and hope that this body will join us. We know that there is a corrective amendment if we can get past this vote. We don't ask police officers to go out into the streets without giving them basic safety training. We don't ask firefighters to go into burning buildings without having basic safety training. It makes sense that we urge and we require construction workers who are building our public projects to get basic public safety training. The cost of providing this ten-hour OSHA training is free. It is through a grant from OSHA from the U.S. Department of Labor. We know the cost to families when construction workers are injured, when lives are lost on construction jobs. The estimates are, and it is a shocking estimate that, on average, well I saw one that said four construction workers and others saying six construction workers die on the job every day. This is something which, through training, we can reduce. Clearly we'll never eliminate injuries on the job, but these fatalities, these injuries, it is up to us to encourage that safety training that we require of so many other jobs, so many other fields, and this is a bill which we need to get an ought to pass motion so that we can pass it today and begin to see reduction in injuries on the job in the future. Thanks.

SENATOR CLEGG: Thank you, Senator Larsen. You said that the cost of this was free. So you're saying that there is a federal grant that will pay all the employers for the ten hours it is going to take for their employees?

SENATOR LARSEN: The cost of the training is free. It does not cost the employer to send or the employee to attend a class. Whether that is an on the job, is in fact...in essence however, will save an employer who doesn't have an injured worker, lost time and lost wages because they've got an injured employee that they have to either replace or wait until their injuries heals.

SENATOR CLEGG: So I am understanding you correctly that the employer does not get reimbursed for the time he has to pay his employee to take this class?

SENATOR LARSEN: There is no reimbursement. There is no charge to the private sector employers who send their employees to this OSHA training in DES.

SENATOR CLEGG: One more time. But, you are aware that the employer has to pay the employee for the ten hours he is spending in that classroom?

SENATOR LARSEN: It is a wise investment of that employer's time.

SENATOR CLEGG: That answer is yes. Okay. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I also rise in opposition to the ITL. I just wanted to note that the committee not only heard testimony about the fact that there are training programs already in operation that employers can send employees to free of charge, but we also heard testimony that, in other states, this kind of program has worked well to the point where private insurance companies are encouraging their insurers to use it because they do see a reduction in workplace injuries as a result and an reduction in workers' compensation expenses as a result. No one appeared in opposition to this bill. So I urge the members to vote against the ITL. We should pass the bill with the floor amendment.

SENATOR FOSTER: Senator Hassan, how many times does an employee have to go through this? Is it just once?

SENATOR HASSAN: It is once, is my understanding. It is a ten-hour training and we heard testimony that it is quite effective.

SENATOR FOSTER: So it is a day course or a two-day course?

SENATOR HASSAN: My understanding was that it was a day course. But I don't know that we had specific testimony on that.

SENATOR FOSTER: Thank you.

SENATOR FLANDERS: Thank you, Mr. President. I might remind my friends from Nashua if it wasn't for stupidity they may not have the practice that they have or I might not have been able to work for an insurance company for 35 years. I think this is a great idea but I don't think this goes any where near further enough. We have just said state contracts. How about all the hospitals that are being built and all of the buildings that are being built in Nashua and Manchester? We don't care whether they get hurt there? This doesn't make any sense. It is okay, under \$10,000 projects if you get hurt it is okay? It doesn't make sense. It may be a good idea, but I don't think picking on state contracts, I don't think it accomplishes what you want to do if we are doing it for safety reasons. The other thing I did, I did make a call to one contractor in my area, a good size contractor. He had two concerns. Number one is, he says in the contracting business people come and go rather fast. So I take the time and I will remind you that if he sends somebody down here, he has to buy them meals, and he has to pay him an hourly rate. I just had this happen to somebody in my district. The Labor Department called him in and they indeed had to do that. So they would have to buy him ten hours and they may have to buy him a breakfast, a lunch and maybe a dinner, plus ten hours pay. But then have it happen that he gets his certificate and then he leaves ABC company and then goes to D company. They move around and they move around a lot. So, all of a sudden you have your people trained and then you haven't got your people trained. You will have people in training courses in all times as far as I can see, in the construction busi-

ness as I see it. I think, if you're going to do it, you do it all the way. Why just pick on just state and not the towns and not the hospitals, and not everybody else where injuries happen? Thank you.

SENATOR HASSAN: Senator Flanders, are you aware, sir, that hospitals are already required to have OSHA training for their employees about other kinds of work place safety?

SENATOR FLANDERS: I am, but not the building of it. Is that correct?

SENATOR HASSAN: I understand that, sir.

SENATOR FLANDERS: Thank you.

SENATOR GOTTESMAN: Senator Flanders, I ask you, isn't that a good place to start, having safety right at the state level so that the people know that we are sending a message that safety is important to us?

SENATOR FLANDERS: That is a matter of opinion.

SENATOR BARNES: Thank you, Mr. President. Senator Flanders, good to see you.

SENATOR FLANDERS: Good to see you.

SENATOR BARNES: I agree with you. The turnover rate in a lot of businesses is quite heavy some times. I am sure the construction business is that way. I know the restaurant business is certainly that way. But isn't it true that I'm "A" and you come to work for me. I send you to this ten-hour training session. Then you decide that you don't want to work for me, but you want to go to work for Senator Gatsas. So you go to work for Senator Gatsas, but you do not have to, I don't believe, have to go to that training program again. So Senator Gatsas or anyone else that you might decide to go to, doesn't have to pay again for that? It is a one time deal. A one time training. Correct?

SENATOR FLANDERS: That's correct.

SENATOR BARNES: Thank you very much.

SENATOR FLANDERS: It is great for the employee, but not good for the employer.

SENATOR BARNES: I understand. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I rise in opposition to the ITL and in favor of the amendment that Senator Gallus is going to bring forward. I think the two questions that I had was one, the certified payrolls which, for most people, don't understand what that burden is to a small employer. The amendment will show that that's been removed from the bill. Also the immediate removal of an employee, which allows that employee to have 60 days to get OSHA compliant. I agree with Senator Clegg, there is certainly the vast majority, the vast majority of companies out there have safety programs. The reason why they have safety programs is to reduce their workers' comp cost. It is not about the employee, it is obviously about one, the safety of that employee, and two, about reducing costs to the company. So the small employer that doesn't have a safety panel in place, could incur some costs on workers' comp. We understand that increased modifications last for three years. And, for three years, with the difference by sending somebody to a course that may teach them something about safety, that may alleviate those injuries **TAPE CHANGE** certainly is a helpful situation. So again, I think that this is about safety. I think that it is about a position that when we...and I agree with Senator Clegg, the employer probably has to pay, but at some

point, the application can say "do you have an OSHA Ten qualification?" on that application. And it certainly would be up that employer to decide whether they want to hire that individual or not. So I think again, I would suggest we vote down the ITL and vote the amendment in. Thank you, Mr. President.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Clegg.

Seconded by Senator Larsen.

The following Senators voted Yes: Boyce, Flanders, Odell, Eaton, Clegg, Letourneau, Morse.

The following Senators voted No: Gallus, Johnson, Kenney, Burling, Roberge, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 7 - Nays: 15

Senator Bragdon rule #42.

Motion failed.

Senator Gallus moved ought to pass.

Senator Gallus offered a floor amendment.

Sen. Gallus, Dist. 1

March 9, 2005

2005-0542s

05/04

Floor Amendment to SB 193

Amend RSA 277:5-a, I and II as inserted by section 1 of the bill by replacing them with the following:

I. Any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, alteration, remodeling, installation, demolition, maintenance, or repair of any public work or building by a state agency or instrumentality thereof and estimated by the awarding authority to cost more than \$10,000, shall certify on such bid or contract, under penalties of perjury, as follows: that all employees to be employed at the worksite shall have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and that documentation of successful completion of said course shall be provided to the awarding authority prior to the time each employee begins work.

II. Any employee found on the worksite without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall have 60 days to comply with the requirements of this section.

2005-0542s

AMENDED ANALYSIS

This bill requires bidders on state building and public works contracts over \$10,000 to certify that the employees have completed an Occupational Safety and Health Administration safety course.

SENATOR GALLUS: Thank you very much, Mr. President. At this time, I would like to move SB 193 with amendment ought to pass and I would like to speak to my amendment, which can be presented. Thank you,

Mr. President. The new amendment eliminates coverage on municipalities, but requires a ten hour OSHA safety course for all employees on state contracts of over \$10,000. It allows them up to 60 days to complete the course if they have to. Job safety and safety practices are the core of this legislation. I urge you to vote yes. Thank you.

SENATOR BOYCE: Mr. President, I don't see that this has an FN, but I do believe that this will have a significant cost impact on the state. I am curious whether this can be sent to Finance should it pass?

SENATOR EATON (In the Chair): Senator Morse, please.

SENATOR MORSE: I have the same question. On section three of the bill, which isn't addressed in the amendment, but it is in the original bill, "the labor commissioner shall have the authority to enforce and investigate." I question that there is not an expense there. It says in the committee report there is no expense, but I don't know how there couldn't be. And then it is turned over to the Justice Department and it includes proceedings and superior court to restrain the award for contract, which I got to believe is an expense there. So.

SENATOR EATON (In the Chair): We would send this to Finance.

Floor amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 24, relative to disposition upon death of patient accounts in nursing homes. Judiciary Committee. Re-refer to committee, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 24 be re-referred to committee. The current situation in nursing homes is that, when a patient on Medicaid dies, there is no consistent way to handle whatever private funds the deceased may have had. Some nursing homes are giving a check to the deceased's family. In some nursing homes, the monies appear to be piling up and haven't been dealt with in a uniform manner. The intent of this legislation was to provide uniformity. The committee was not able to achieve a compromise in time to pass the bill. We ask that the bill be re-referred to committee. Be referred to Judiciary, so that the Probate Court can work with the nursing home administrators to come up with a solution that will be satisfactory for all involved. Thank you very much.

Adopted.

SB 24 was re-referred to the Judiciary Committee.

SB 70, relative to the Timothy and Abigail B. Walker Lecture Fund. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

Public and Municipal Affairs

February 17, 2005

2005-0349s

01/09

Amendment to SB 70

Amend the title of the bill by replacing it with the following:

AN ACT relative to the powers of special corporations.

Amend the bill by replacing all after the enacting clause with the following:

1 Special Corporations; Powers Extended. Amend RSA 29-2:8-1 to read as follows:

292:8-1 Powers Extended. Any non-profit corporation heretofore organized by special act of the legislature for purposes as set forth by RSA 292:1 may:

I. Change its name, [may] eliminate any limitation on the assets it is authorized to hold, [may] provide for distribution of its assets upon dissolution of the said corporation, by a majority vote of such corporation, unless otherwise provided by any such special act or the bylaws of any such corporation, at a meeting duly called for that purpose, and by recording a certified copy of such vote in the office of the secretary of state. The fee for recording said certified copy in the office of the secretary of state shall be \$10.

II. *Change its purpose by a majority vote of said corporation. A written notice of the proposed change shall be provided to the director of charitable trusts, department of justice before the vote is taken. If legal cause exists which would prevent the proposed change in purpose, the director of charitable trusts shall have 30 days to notify the corporation of any additional requirements. A certified copy of the vote shall be filed in the office of the secretary of state. The fee for recording said certified copy in the office of the secretary of state shall be \$10.*

2 Effective Date. This act shall take effect 60 days after its passage.

2005-0349s

AMENDED ANALYSIS

This bill establishes a procedure for non-profit corporations to extend their powers.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 70 ought to pass with amendment. In the 1800s the only way to create a corporation was by legislation. Now we have a Secretary of State who forms corporations by request. Senate Bill 70 would allow any non-profit corporation legislatively created in the 1800s to amend their mission statements without requiring legislative action. Under the amended version of Senate Bill 70, which amendment was recommended by the director of Charitable Trusts and the Attorney General's Office, under the amended version, non-profit corporations created by a special act of the legislature, may change their purpose by a majority vote after notifying and receiving approval from the director of Charitable Trusts and filing the change and paying the fee with the Secretary of State. In past legislative sessions, we have regularly seen non-profits that are subject to this old law having to come to the legislature in order to amend their missions or purpose statements. This amendment, as recommended by the director of Charitable Trusts in the attorney AG's office will correct an archaic system and eliminate the need for piecemeal legislation. The Public and Municipal Affairs Committee supports this bill unanimously as ought to pass with amendment. Thank you for your support.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 192, relative to service in a war or conflict qualifying for the veterans' tax credit. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

February 23, 2005

2005-0447s

10/04

Amendment to SB 192

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect April 1, 2006.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 192 ought to pass with amendment. Senate Bill 192 will revise the war or armed conflicts for which veterans may receive the veterans' property tax credit. Specifically, it adds in the conflict period we are now in, including the first Gulf War, while deleting wars for which we no longer have living veterans. I also want it to be noted that, while the federal government and the RSA we are amending refers to Korea where over 33,000 brave service people were killed and Vietnam, where over 58,000 brave Americans died as conflicts. I believe this does a tremendous injustice to those who served and lost their lives there. We all know these were wars and should always be remembered as such, and some of you that are as old as I am, might remember that the Korean Conflict, at first, was called "a police action" by our then President, Harry S. Truman. At least they changed that. The Public and Municipal Affairs Committee supports this bill unanimously and asks for your support. Thank you.

SENATOR JOHNSON: Thank you, Mr. President. Thank you. As a veteran of World War II, and I do qualify for the tax credit under the Wars or Conflicts, I just want to quickly address those veterans, which I understand is about 48,000 who are out there, who are not qualified because of the War or Conflict, but they were either drafted or enlisted. And, to my knowledge, they had no say in where they went or how they served. So I would hope someday, that we would consider legislation which would be enabling legislation for the towns to address that issue, because I think I have heard from some of the towns saying that it is the cost issue, and I say, "shame on them", because I think that they are qualified veterans and they should be considered for a tax credit. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator Johnson brings up a point that has been discussed by many people. I just want to let everyone in this room know that the town of Raymond, last year, turned down three warrant articles for veterans. This year, the three warrant articles went by on a better than a 3-1 vote. In deliberative session some folks got up and they really irritated the heck out of me because they started to talk about money. I have a picture in my office, my new office in room 103, which the Senate President so graciously moved me to. There is a picture of the Korean War. I happen to have a second one at home. On it, those of you who have seen it, it says, "Freedom is not Free". As I walked around that deliberative session and I showed it to those people who were concerned about money, I said I'm more concerned about the young men and women from Raymond and the rest of this country that are dying for us now for freedom. So freedom is not free, and thank God the citizens of Raymond decided to take care of their veterans this time around. I hope others of you in your towns had the same thing happen. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I just wanted to say, as a member of the New Hampshire Veterans' Advisory Council, which is comprised of all of the veterans' associations and groups here in New Hampshire and are friendly supporting this bill. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 18, relative to sales of tickets for pure lotteries by those not employed by the lottery commission. Ways and Means Committee. Ought to Pass, Vote 3-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 18 ought to pass. While current law allows no one other than lottery employees to sell lottery tickets from mobile units, the commission's limited staffing does not allow the lottery to increase its presence at more events and locations. With the passage of Senate Bill 18, the lottery will benefit from increased availability and sales and retailers will benefit from the sales commissions. Under the bill, temporary sales terminals, signs and tickets will be set up at no cost to the retailer who will be responsible for ticket inventory and sales. Mobile unit sales possibilities include agricultural fairs, as well as professional and semi-professional sporting events. The committee recommends ought to pass on Senate Bill 18. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 63-FN-A, establishing a court mediation fund to pay the costs of a mediation program in the district courts. Ways and Means Committee. Ought to Pass, Vote 3-1. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move Senate Bill 63 ought to pass. The bill establishes a \$5 surcharge on each entry fee collected by the district courts for small claims to pay the costs of a mediation program in the district courts. Pilot mediation programs around the state have exceeded expectations. Testimony described mediation as a process in which the parties feel in control, happier with the results, and unlikely to return to court, which will save the state money. The legislature will receive an accounting of the funds generated by the \$5 surcharge on a regular basis and the committee recommends ought to pass on Senate Bill 63. Thank you very much, Mr. President.

Adopted.

Ordered to third reading.

SB 99-FN, relative to the penalty for failure to file a property inventory form. Ways and Means Committee. Ought to Pass, Vote 5-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 99 ought to pass. The bill removes the penalty of the loss of appeal for failure to file a timely property inventory form, a requirement that only a few municipalities still practice. The right to appeal an abatement denial is a fundamental feature of our tax structure and the committee recommends ought to pass on Senate Bill 99. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 104-FN, relative to the tax exemption for water and air pollution control facilities. Ways and Means Committee. Ought to Pass, Vote 4-1. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 104 ought to pass. Senate Bill 104 reflects the Senate's position from last session that left the Senate with a 22-1 vote. The bill clarifies that a tax exemption does not apply to pollution control facilities or devices that are only partly intended for the purpose of reducing pollution. Senate Bill 104 recognizes that the exemption was not meant to capitalize such facilities. The committee recommends ought to pass on Senate Bill 104. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 117-FN, relative to utility property tax appeals. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

Senate Ways and Means
February 23, 2005
2005-0454s
09/04

Amendment to SB 117-FN

Amend the bill by replacing all after section 1 with the following:

2 Applicability. This act shall apply to all utility property tax appeals under RSA 83-F for property tax years beginning on or after April 1, 2005.

3 Effective Date. This act shall take effect April 1, 2005.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 117 ought to pass with amendment. The bill requires all utility property tax appeals to be heard by the Department of Revenue Administration. Currently, appeals are made directly to the Board of Tax and Land Appeals or the Superior Court, which creates a situation where taxpayers may file two appeals to two different places. Senate Bill 117 will reduce the caseload for the Bureau of Tax and Land Appeals and the Superior Court as well as the Attorney General's Office which defends the revenue administration in cases before the Superior Court. The bill also extends the window for filing an appeal to sixty days. Senate Bill 117, as amended, will streamline the process and allow companies ample opportunity to explore settlement operations during the extended window for filing an appeal. The committee adopted an amendment clarifying that this bill applies to all real estate utility property tax assessments under Chapter 83-F for property tax years beginning on or after April 1, 2005. The committee recommends ought to pass with amendment on Senate Bill 117. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator, does this take the opportunity for the utility, after the DRA meets, to go to the Board of Land and Tax Appeals or the Superior Court?

SENATOR D'ALLESANDRO: Could you repeat that again please?

SENATOR GATSAS: Yes. Reading this legislation, prior to, the utility had an opportunity to go either to the Superior Court or the Board of Land and Tax Appeals. They had their choice one of two places to go. This takes that out and says it has to go to DRA. Does that now assume that they can't go to the Board of Land and Tax Appeals or the Superior Court?

SENATOR D'ALLESANDRO: I believe, and again, I am going by what Commissioner Blatsos said at the hearing, that you are required to go to Revenue Administration, but that you still have the option of going to court.

SENATOR GATSAS: I am just reading from line six to line eight on the bill. It says, "valuations and assessments according to the procedures and subject to the time limits provided for other taxes administered by the department under RSA 21-J." I don't believe that it gives them the ability to move forward, to move forward to the BTLA.

SENATOR D'ALLESANDRO: Again, if you look at the fiscal note, pursuant to this statute, if dissatisfied with the results of the DRA, an appeal can then be made to the Board of Land and Tax Appeals or to the Superior Court. That is in the methodology.

SENATOR GATSAS: I know, but I'm just saying that the legislation doesn't say that, Senator.

SENATOR D'ALLESANDRO: I can only tell you what a) Blatsos told us at the hearing and it is on the record now, and the methodology that is contained at the rear of the bill. I can only go by what the testimony that was given to us, and if indeed there is a question and that question remains unanswered, we could table this piece of legislation until Senator Gatsas' question is answered. I don't have a problem with that.

SENATOR CLEGG: Senator D'Allesandro, in the methodology of the fiscal note, do you see as I see that the BTLA assumes that half of the appeals will be resolved at the DRA, resulting in a reduction to the BTLA, but that the BTLA or superior court will take the ones that aren't resolved at that level, which is why there is not a real savings from the Board of Land and tax Appeals because they still expect to have to do some?

SENATOR D'ALLESANDRO: Right.

SENATOR CLEGG: Thank you.

SENATOR D'ALLESANDRO: I understand that. But again, if Senator Gatsas has a query and he is not satisfied, I would be happy to address that at whatever level he wants it addressed. Again Senator, we have the statute here. The appeals...maybe we could take a ten-second recess while Senator Gatsas reads the statute.

Recess.

Out of recess.

SENATOR D'ALLESANDRO: Mr. President, I think Senator Gatsas says that, if we are comfortable with it ought to pass as amended, we ought to move forward with it.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 166-FN, relative to procedures for the forfeiture and sale of unstamped tobacco products. Ways and Means Committee. Inexpedient to Legislate, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 166 inexpedient to legislate. The bill would permit the Department of Revenue Administration to seize and forfeit certain tobacco

products without court proceedings and allow the Department to liquidate or destroy forfeited unstamped and invalidated stamped tobacco products. Senate Bill 166 would negatively affect both retailers and wholesalers and the committee questioned whether the small amount of tobacco products in question justifies the cost of the program. The committee recommends inexpedient to legislate on Senate Bill 166. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

SB 210-FN, relative to the nexus required for application of the business profits tax and business enterprise tax and relative to the obligation to collect and remit taxes in another state. Ways and Means Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

Senate Ways and Means

February 23, 2005

2005-0453s

05/10

Amendment to SB 210-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to a declaratory judgment to adjudicate constitutional nexus.

Amend the bill by deleting sections 1-3 and renumbering the original sections 4-5 to read as 1-2, respectively.

2005-0453s

AMENDED ANALYSIS

The bill declares that the state superior court has the authority to determine whether requiring a New Hampshire business to pay taxes in another state is an undue burden on interstate commerce in violation of the United States Constitution.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 210, and I want to make sure that I pronounce this properly, "otta pass" with amendment. The committee amended the bill by removing the first section of the bill, which was really put in error anyway. As amended, Senate Bill 210 permits a New Hampshire business to obtain a declaratory judgment in a New Hampshire court to determine whether another state's requirement that a New Hampshire business pay taxes or collect taxes for that other state is invalid. Under the U.S. court decision, the Quill Decision, businesses with no physical presence or nexus in a state, cannot be required to collect sales taxes for that state and remit them to that state. The intent of this bill is to allow a New Hampshire company to let a New Hampshire court decide the matter rather than having to go to another state to defend themselves in that state's court. The committee recommends ought to pass, "otta pass" with amendment on Senate Bill 210. Thank you, Mr. President.

SENATOR FOSTER: Senator Boyce, my question, I read the Quill Decision that is cited in here and that situation, South Dakota was deciding whether to tax another out-of-state business based on their own tax law. What we are saying here is the state of New Hampshire gets to decide whether the state of Massachusetts or some other state, gets to tax a New Hampshire business. My concern is, aren't we sort of inviting the reverse for Massachusetts to decide whether we can tax Massa-

chusetts corporations doing business here and isn't that where the problems also are going to lie, that you are going to have 50 states sort of trying to protect their own?

SENATOR BOYCE: Well what I see as a problem is, if you have a company, the best example that I can think of is PC Connection here in New Hampshire. They are a mail and Internet sales organization. As far as I know, they don't have any business property located in any other states. They are a New Hampshire corporation. Do business in New Hampshire and they sell all over the world. It just appears to me that it is unfair to them to make them go to another state where they have no presence, and have no nexus at all, to appear in court to defend themselves if they are you know, the state, say California, decides that they want to force them to charge the sales tax. So, as to whether or not this would prompt some retaliatory similar action, I don't think so because, when we are requiring a company to pay the business profits tax or the BET tax, it is based on our expectations that they actually have some physical presence here. If that is the case, we can simply go to that place where they have physical presence here and serve them with papers and then they have to appear in our court. If the PC Connection people have no place that they own or do business in, in California, there is no place for them to be served there, they would have to be served here and they would have this court decision in New Hampshire saying that they have no nexus there and therefore, under the federal Quill Decision, have no need to do what California wants. That is the intent. Now I understand that courts and lawyers and so forth, you know, try to twist things around and come up with other decisions...

SENATOR FOSTER: That is what I am in the business of doing...

SENATOR BOYCE: I mean that's why you go to college and that's what you do. That's what it is for, right? But I understand that there is some question as to whether or not a federal court would go along with this or the court in another state would go along with it, but I think it is an attempt to try and do the right thing for New Hampshire businesses, and that is my first concern. I am not really concerned whether some federal court somewhere, sometime, decides that you know, they were wrong on Quill or that Quill is not the current standard or something else happens. I'm just looking to look out for New Hampshire businesses and that's what this is intended to do. Whether it will really do that will probably depend on some court somewhere.

SENATOR FOSTER: Thank you.

SENATOR BURLING: Senator, I have a similar concern that arises out of some of the great estate tax wars that have been raging between states like New York and Florida. If you establish a procedure in New Hampshire for declaratory judgment that can be instituted by a New Hampshire business, do you not have to have some kind of a notice provision under which the state which may be the subject of the attempt to assess, learns of the procedure? In other words, if it were Nebraska that were trying to get a New Hampshire corporation, wouldn't we have to let the Secretary of State in Nebraska know that this procedure was going forward?

SENATOR BOYCE: I see this as actually being a preventative, a general preventative. If a company, for instance, PC Connection, wanted to do this and say we don't have any presence in any other state, and therefore, any other state that comes to us and says that we need to collect their sales tax, we can simply say no, we have already been to court and

determined that we don't have a presence in your state, we have presence in no other state, and proceed from that point. I don't think that we need to notify all 49 other states.

SENATOR BURLING: So in essence, under this act, a New Hampshire citizen or a New Hampshire corporation could go to court and basically get a free pass that would be binding on all the other 49 jurisdictions?

SENATOR BOYCE: The intent is to prevent them from having to go to court in another state to defend themselves on something that is a matter that they are a New Hampshire corporation and not anywhere else.

SENATOR BURLING: Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. I won't be long. This goes back...this bill, I support the ought to pass motion on this bill and on the amendment as well. This goes back to the days especially when people did catalog business. We are now coming around to the same thing. It is not just basically PC Corporated or anything else. It is what people used to have to face when they did catalog business was that they would place an order and the order would go to some location. It could be a multiple location. And each one of those states would try to add on a sales tax onto each one of the individual locations where the order was going to. That was shot down years ago back in the '70s saying that New Hampshire has a privilege to not have a sales tax and that no other state had the right to add on to the customers' billing, a sales tax of their own, because the order was being taken here in New Hampshire, the place of residence where the person was buying the goods. So they were protected by that fact that New Hampshire had no sales tax. I believe that still happens today, that customers are still protected in the same way. But I think that this bill furthers that and protects everyone now, okay, even better than what they were protected before because it certainly was clear that some states are really trying to collect more money in anticipation of sales tax. I thank you, Mr. President, for the time and thank you all. I urge everybody to vote ought to pass on this.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 5, establishing a commission to study the state park system.

SB 18, relative to sales of tickets for pure lotteries by those not employed by the lottery commission.

SB 40, permitting special school district meetings to be held in conjunction with the biennial election in certain school districts.

SB 58-FN, making certain changes in the workers' compensation law.

SB 63-FN-A, establishing a court mediation fund to pay the costs of a mediation program in the district courts.

SB 66, establishing a committee to study the creation of a northern New England purchasing alliance for small business health insurance.

SB 70, relative to the powers of special corporations.

SB 72, relative to the licensing of public adjusters.

SB 77, relative to the review of proposed health care provider contracts.

SB 78, relative to payment of health care providers by health carriers.

SB 99-FN, relative to the penalty for failure to file a property inventory form.

SB 104-FN, relative to the tax exemption for water and air pollution control facilities.

SB 117-FN, relative to utility property tax appeals.

SB 123, relative to the liability of pet shops for the sale of sick animals.

SB 140, relative to the acceptance of in-lieu payments for the restoration or creation of wetlands and the preservation of upland areas adjacent to wetland areas.

SB 150-FN, relative to application fees for certain bank incorporations.

SB 152-FN, relative to audits by the department of revenue administration of enhanced 911 charges and relative to the confidentiality of information collected by the department of safety regarding the surcharge for the enhanced 911 system.

SB 172, establishing a committee to study a medical fee schedule for workers' compensation.

SB 192, relative to service in a war or conflict qualifying for the veterans' tax credit.

SB 211-FN, relative to pharmaceutical marketers.

SB 219-FN, relative to examinations under workers' compensation.

SB 222-FN, relative to cumulative trauma under workers' compensation.

SCR 4, supporting federal funding for Lyme disease research.

SJR 2, urging Congress to reject the Streamlined Sales Tax Project.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

INTRODUCTION OF SENATE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from SB 227 to SJR 3 shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

05-1059

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge. (Burling, Dist 5; Mirski, Graf 10; Mulholland, Graf 10; Solomon, Graf 10; Transportation and Interstate Cooperation)

05-1066

SJR 3, encouraging the New Hampshire Congressional delegation to support the federal Child Custody Protection Act. (Boyce, Dist 4; Letourneau, Dist 19; Itse, Rock 9; Boyce, Belk 5; Slocum, Hills 6; Mirski, Graf 10; Health and Human Services)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

March 17, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Near the south central coast of Ireland is the little hamlet named Blarney. The upper battlements of a castle built there in 1446, contain that famous stone – that kissable, legendary source of eloquence and good luck that is as much a part of the lore of this day as are sham-rocks, leprechauns, green beer and parades. It has been said that when you get a little bit of blarney on your lips, you acquire “the ability to influence and coax with fair words and soft speech without giving offense”. If that is even a little bit true, then our society, our leaders, our friends in the media, and those who seek to offer influence, and just about everybody else I can think of in this red and blue point in our history, need to go kiss that stone every single day. Coaxing with fair words and soft speech. Will that be an accurate description of you on St. Patrick’s Day and tomorrow? And remember this, kissing the Blarney Stone is no easy feat. If you’ve been to Ireland and tried to do it, you know what I mean. You have to get down on the ground, lie on your back, hold on tightly to a railing and stretch your neck until lips meet stone. Over the centuries, some have actually died trying to kiss the Blarney Stone. So, I think it is worth it and I invite you to pucker up. Let us pray.

God of saints, rainbows and pots of gold, thank You for the heritage of the people of the Emerald Island, and for that Welshman, St. Patrick, who ministered to them. Give us green courage today to take the risk to kiss the stone that will make our hearts and words fair, soft and as potent as Irish whiskey. Amen

Senator Roberge led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR GREEN (RULE #44): May I rise please for a point of personal privilege?

SENATOR EATON (In the Chair): Yes.

SENATOR GREEN (RULE #44): Thank you. By the way, let me say thank you to my colleagues for having sang happy birthday to me today. I am 39 years old. My mother was upset because I was born just after St. Patrick's Day. It was one of those things. I also want to thank you for placing Senate Bill 94 on special order at the last session of this body. That normally has been as a courtesy that we have all given our colleagues over the years. I think it is an appropriate courtesy and I want to thank you all. As a result of being at home and having little else to do other than try to cope with a virus or flu, I became aware that there was an article coming in the newspaper and I was called on the article. Under personal privilege, it says one of the things that you can speak about is the issue of integrity, your record (and my record of attendance in this body is very dear to me), and the issue of unfair, unwanted criticism. So I do this, but I think it is important. I don't do it lightly, but I think that when things happen in life, if you don't clear the record early, it just festers and keeps going, and the rumor eventually becomes fact. In this particular article which caught my attention, was the issue of, let's see if I can find it please. It revolved around Senate Bill 94 basically which is the poles and wires. And any of you who have been here know my passion for this issue. It is based on fair tax policy, nothing else. It is not personal. It is not against any member, and it certainly is not against the industry. We all have our things that we feel strongly about in life. One of the reasons I am over here is to do what I think is in the best interest of the property taxpayers and the voters of the state and my district. The article, in terms of a person having an opinion about why I was absent, is fine. Everybody has a right to their opinion. I don't have a problem. But it did take in the question whether I was really sick or whether I wasn't here because I didn't have the votes to pass the exemption for poles and wires. Of course that is absolutely untrue. I guarantee...if you want me to bring in a doctor's note, I will do that. But the thing that really irritated me, really irritated me, forget everything else, was that the person that who was charging I was not here because I really was absent because I didn't want to be here to vote or argue the case of poles and wires, wouldn't give their name. That's what irritates me. Why do you make statements, public statements, about a fellow Senator without being courteous enough and having the courage of your convictions? All it would say, and I don't want to point the finger, but it broadens it to a lot of people in here. It is not fair. It says, "one member of the Senate Republican leadership who favors keeping the exemption, quietly asked that it be kept quiet on his comments. If Green failed to show knowing he didn't have the votes to kill the bill extending the exemption or enough votes to pass his own bill killing the exemption." What is that all about? That had nothing to do with me not being here? And, if you want to make that observation, I accept it. We all have a right to our opinion. But at least be man enough or woman enough to stand up and say you were the one that said it. Now the article goes on to another little subject which I have said in this chamber before when it comes to this issue, about influence and money in the system. But I want you to know, my name is attached to those comments, and if anybody has any problems with my comments, you know I said them. Now what I'm asking today under personal privilege is the person in leadership who said that, will they please step forward because that is not appropriate. If you have something to say to me, say it. If you want to talk to press, talk to press to your hearts content, but at least identify yourself as a source of the quote and the comment. I know enough not to ask a reporter for his sources. I've been in this business long

enough. So I wouldn't ask the reporter who said it. I have done my own research. I know basically who said it. But let them say they said it. Stand up on your own two feet and tell me that you think I wasn't here for some other reason other than being sick. This body didn't believe that. You gave the courtesy right away. You had no questions and you shouldn't have. Nor would I if someone had asked me. When you impugn my integrity and my reasons for doing something, and hide behind a quote without identifying yourself, I get upset. I would ask that that sort of thing stop. I am not telling you to not give opinions;+ give all the opinions that you want. But at least identify who is saying it please. Thank you. I appreciate the time.

SPECIAL ORDER

SB 11-FN, extending the local property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Ought to pass, Vote 3-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move Senate Bill 11 ought to pass. Senate Bill 11 extends the repeal date of the local property exemption for wooden poles and conduits to July 1, 2010. The committee believes this exemption levels the playing field in telecommunications industry. We also believe that, if the exemption were to end, the tax on wooden poles and conduits would be passed directly to the consumers, the New Hampshire citizens and taxpayers. The Energy and Economic Development Committee asks your support on the motion of ought to pass. Thank you.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

March 17, 2005

2005-0709s

09/01

Floor Amendment to SB 11-FN

Amend the title of the bill by replacing it with the following:

AN ACT repealing the local property tax exemption for wooden poles and conduits and relative to exemptions from the communications services tax.

Amend the bill by replacing all after the enacting clause with the following:

1 Prospective Repeal Date for Exemption of Wooden Poles and Conduits Under RSA 72:8-b. Amend 1998, 304:6, I as amended by 1999, 163:7, 2001, 158:2, 2003, 270:8, and 2004, 35:1 to read as follows:

1. Section 5 of this act shall take effect July 1, [2006] **2005**.

2 Communications Services Tax; Exemption. Amend RSA 82-A:5 to read as follows:

82-A:5 Exemptions. The first [§12] **\$20** of the monthly gross charge for a residential customer's telephone exchange access and exchange service ***for one telephone line and the first \$12 of the monthly gross charge for a residential customer's telephone exchange access and exchange service for each additional telephone line*** shall be exempt from the tax imposed by RSA 82-A:3. If billing is other than on a monthly basis, the exemption allowed shall be prorated to the ratio that the billing period bears to a period of 30 days.

3 Effective Date. This act shall take effect July 1, 2005.

2005-0709s

AMENDED ANALYSIS

This bill repeals the local property tax exemption for wooden poles and conduits on July 1, 2005.

The bill also changes the exemption amounts for a residential customer's telephone exchange access and exchange service charges under the communications services tax.

SENATOR GREEN: The amendment to Senate Bill 11 is as follows. I would like to amend the entire bill and replace it with this amendment. This bill does two things, this amendment. It repeals the exemption on poles and conduits, and it also creates an additional exemption for individual residential owners to help compensate for the increase, proposed increase, threatened increase, by Verizon, that they would increase their phone bills. This issue was discussed in committee, not in a written form, but in discussion form. And I want you to know that there were some basic reasons why this particular piece of legislation was not approved by the committee. I have been trying to deal with this issue for years, and every time I deal with it, someone comes up with another reason why we should keep the exemption. It goes on and it goes on and it goes on. This exemption started out in 1990 as a temporary exemption. Temporary. It was never supposed to be permanent. Never intended to be permanent. However, the industry has worked hard, presented their case, but I don't agree with their case. Their case is basically that the taxpayers in New Hampshire, property taxpayers, both state and local property taxpayers, should be subsidizing their corporate profit making company. That is what they think. The fact that they are the only one in the whole state, when I say one, the only one industry, which the major player is Verizon. Ninety-five percent of the activity dealing with this exemption deals with the company of Verizon. So the point is, they believe that they are entitled at this point, because it has been 15 years, to an exemption. They are the only ones to get it. They argue that they are going to definitely increase the phone bills if they don't keep this exemption. They tell their labor union that if we don't get this exemption we're going to lose business and we're going to have to lay off some people. Now they are going to lay off people because we don't give them the exemption? They are going to lay off people because the phone bills are going up? But they are going to increase the phone bill, they are not going to lose any revenue. As a basic tax policy and a fairness question, you don't give somebody special advantages as a business over all other businesses and take it from local and state property taxes. Local taxes are the kinds of things that we use money for that we are wrestling around here with to do such things as building aid for schools, to do such things as catastrophic aid for special education, to provide education, to provide the services that these companies use from our local communities like plowing, like police, like fire, like emergency medical service. Those are things that are paid for at the local level, with the local property tax. And you're telling me or someone is saying to me that that is not important, that they're entitled to these millions of dollars, of taxpayers dollars. Now I have never been against trying to infuse some capital to improve economic development. As many of you know, I was the State Economic Development Director of this state for four years. I've dealt with that issue. James River was a major issue when I was there. We did some low interest bonding for them to help them fix up their pollution problem. I am not about that. What I am about is, if you

are going to do this kind of credit or this kind of exemption, don't tag it onto the local property taxes. It is the one tax that is under distress. Everything that we do around here is laid to property taxes. Why do we keep picking on that tax? 28-A says basically we are not to down shift cost to the local communities on laws that we pass. We have given exemptions in this body and this legislature over the years for other exemptions like elderly. We have given credits for veterans. We have given exemptions for handicapped. But in all cases, we said we can't do that directly because of 28-A. So what have we done? We've created local options. We've said we are not going to do this unless the people of each community vote to do it. So we have allowed them the authority to do it, but we've left it up to the local community to make that final decision about the exemption. How do you put exemption at the local level, supported at the local level, for handicapped, for elderly, how do you put that, and for veterans, how do you put that in the same category as a subsidy to Verizon? How do you do it? They don't make any money, those people who are getting an exemption, they need the money. It just doesn't work that way in my opinion. If you are going to do anything to give credits or exemptions, there should be an accountability model with it that they are going to do something for getting the money. They don't...no one can tell me what they do for the money. We give them a check. My estimates, and you will hear the estimates, and you will never get an exact figure. I have been through a study committee. There have been two study committees. And in my opinion, those study committees have been stacked by people who already favor the exemption. So you are going to get no report out that is going to be against that industry because they have already made up their mind before they walked in. Read the study reports. See who is on it. Find out what the connection is to the telecommunications industry of these people. It is amazing. It is a complete whitewash. The money that is in there is millions. My best estimate is between \$25 and \$30 million. Of that, about 80 percent of that would stay at the local level because it would be taxed locally. About 20 percent of it would stay at the state level because we also have, if you remember, a statewide property tax. We also have a utilities property tax. And where do you think that money would go? It goes right into the education trust fund. Now why are we doing this? It just, the logic behind it doesn't make any sense. Another issue that always comes up when I have this discussion is that the phone bills are going to go up. They had a hearing I think yesterday, on mercury. Pollution, was there not a hearing on that yesterday? I read it in the paper this morning.

SENATOR BARNES: Yes there was.

SENATOR GREEN: Thank you. And as part of the discussion, they were going to have to increase the electric rates to clean up the environment. Big deal. What do you think happens when you pass laws that create expenses? Do you think the company is going to pay that? The consumer, the ratepayer, is going to pay it. So this is nothing new that they are going to say that the rates are going to go up. But the interesting thing about it is, if you look at my amendment on line 12. I don't want the rates to go up either by the way. I am with you. I don't want rates to go up. I would love to keep them, but I can't control that because that's a private company's decision, it is not my decision and it should remain with them. It is their competitive market, they have to decide what the going market is and what the competitive price can be for them to charge for phone bills. In this amendment, it says, "the first .20." I have in-

creased the exemption for the first line of the residential line for a telephone to 20 cents. I'm sorry, \$20. I am sorry. Twenty-dollars okay? It is currently \$12. We in this body, there was a bill to try to do away with the exemption for individuals altogether. We defeated that. We said no, we are not going to go there. We know that people who are on fixed income especially, need help with their phone lines. This particular exemption, and I want to say this because some people get led to believe that the last time we had this discussion, two weeks ago, that this involved businesses. It does not involve businesses. This exemption only affects residential. So we're not talking businesses on getting an exemption here. We're talking about the people who have phones at home. So now you give on the first line. The first line going into anybody's home, you give them a \$20 exemption. Every other line after that, they get the \$12 exemption, which is already on the books. Now, doing that takes away from part of the argument that they are going to increase the phone bill. The number I've last heard was \$2 a month. But I have heard all kinds of numbers. I don't put any validity in them because they can't substantiate them. No one in any of these committees has ever given us factual information that we can put our hands around and go back and check and see if it makes sense. They'll throw numbers out like...but no one gives you any definite data to substantiate it. Now, the other piece of this which is interesting, for some of you people who have been following this, is the FCC at the federal level, which does a lot of regulating of the telecommunications industry. In fact, if they regulate at the federal level, it affects our regulations at the state level. In the mail the other day, timing is wonderful. I should be sick more often. If I had been here last week I wouldn't have had this. This is from AT & T long distance carrier. "Your local telephone company", who do you suppose that is? There are more than one. Verizon is a big piece but there are other companies as well. But 95 percent of it is Verizon, you are right. The local telephone company in New Hampshire charges AT & T to carry your in-state calls over its lines. To help recover this cost, AT & T will begin to include in your monthly bill, a \$1.70 in-state connection fee. They are going to pass it on to the customer. "Beginning April 15, 2005. For more information about this fee..." blah, blah, blah, 800 number and the whole bit. The point I am making is the FCC earlier had ruled that if you are an outside carrier, a long distance carrier, the local phone companies must allow you to use their lines at a discounted reduced rate. The FCC has now reversed that decision within the last month. And boy, it didn't take long for this card to come out. Now what do you suppose the in-state phone companies are going to do with this increased revenue? This is increased revenue to them. Do you think they're going to lower the phone bill? I am waiting. I am listening. Do you think they're going to go to our regulating body here in the state of New Hampshire and ask for a rate case? I doubt it. We haven't had a rate case since 1989. But we're not going to do that. This revenue that they are going to get, and the increase in our tax exemption for our individual phone users, which is where we should be worried about, and our local property taxpayers, who we should be worried about. These are the people that we should be dealing. This revenue, for \$1.70 per month for every long distance carrier of AT & T in New Hampshire, I don't know what that is going to raise in revenue, but I'm going to tell you, it's not peanuts. They don't have to raise the rate is what my point is. They don't have to, but they will try to. They don't tell you they are going to by the way. They tell you we think we are going to have to. We can't tell you for sure, we don't know for sure. Then they will tell you another thing, we don't have to go to the PUC

to get a rate change. We can just add it onto the bill as a separate line item. They will tell you that. Well guess what? Again, timing is everything in the world. The FCC has said under what they call The Truth in Billing Guidelines. What does that say, truth in billing? How would you feel about that? Shall we have truth in billing? Well, under the regulations, we have truth in billing for both the regular phone line and for wireless phone line. The regulators yesterday, I am talking about the FCC, voted to extend the Truth in Billing Guidelines. How many of you have seen your phone bill with all the added on over and above the flat rate? A lot. They nickel and dime us. They give a flat rate and then they add every thing else on and before you know it, your bill is really up there. That is the nature of the industry. So they threaten us with adding it on without going to the PUC. Well all I guess I am saying is let them do it. You now know that they are charging AT & T and all other carriers to go over their lines at a full rate, no discount. It is going to cost all of you who have long distance, at least...you have long distance with somebody else, but at least with AT & T it is going to be \$1.70 more a month for each of you, for every line you have. And the money is going to Verizon and the other phone companies in that industry. The telecommunications tax was a new tax that was put in 1990. You know what, it was put in as a temporary tax. You think it is temporary anymore, cause the state needs money. I know we need revenues. The state of New Hampshire right now, is giving up, the state not the locals, the state of New Hampshire is giving up revenues right now of around \$10 million, and I'm using a number which was applied in 1990. So no one can say, well you know, it can't be that much. It was that much in 1990. Now I will admit to you that that \$10 million included more than just poles, conduits and wires. Some of that was automobiles and whatever else okay? It was avalorem. It was a personal property tax at that time. But now as a result of court cases and actions of this legislature in 1998, it was voted to make it a real estate property tax and the courts have upheld that all the way to the Supreme Court of this state. That is what is happening. We now have on the books that this is real estate property. Now how many of you think that real estate property is depreciated like personal property? Have any of your homes depreciated? Any of your property depreciated? I don't think so. So when I use \$10 million back in 1990, that's a real low number. That is the state's share at this point, not the local share. And here we are trying to figure out how to get out of a budget crisis with not enough money to do what we want, looking at severe cuts on all the things that a lot of us appreciate, social services and education, and we are going to give one business in this state an exemption. For what? For what? To make yourself feel good? I don't think so. We have a question before us today which is a policy question. That is how I want to get at this. You have heard some of the dialogue and some of what I call "gnashing of teeth" that goes on and a web gets spun. I am not giving you anything that is not factual that I don't have documentation to back up. I cannot get, and I have tried, to get actual figures on the books from these companies. To give you a definite number because I could give you a definite number. I could do the calculation and I could tell you exactly what the state's going to get and within a few dollars what most local communities are going to get. But you know why I can't get the information? Oh, I can get the annual report. How many of you have read an annual report and tried to figure out details? Try it sometimes. It don't work. But I get the flavor of what they are doing. The realities are that they are exempt from the right to

know law. They don't have to tell anybody. They tell the PUC and the PUC can't share it. It is a secret. An industry secret. And you as a citizen and myself, and you as Senators and House members, the Governor's office, you can't get the information because it is not available under the right to know law. What do they got to hide? It is all about competition. Now I am going to say one more thing which I think is important to this whole discussion. I don't think this body wants to be on record for perpetuating unfair business practices. I don't believe you do. Let me tell you what I'm talking about. Have any of you seen this? I will read it. This document look familiar to anybody? Alright, this is what it says, "Verizon online DSL. \$29.95 a month." Now in order to have Verizon online DSL, you need fiber optics. You can't use the regular telephone line. And they make the comparison which is a competitive thing. Comcast charges \$42.95 a month. Now let me ask you something, and I am not here talking for Cablevision. I am not. Okay? But let's think about this a minute. Just think about it. In the competitive world of business this is legitimate, but should we be subsidizing one company over another company to give them the advantage? Should we be doing that 'cause that is what we are doing? We're saying that one industry should have an advantage, tax wise, over another industry which also pays taxes by the way. Not only do they pay taxes, they have to pay a fee to get on this particular industry's telephone poles. They are like a renter. Do you think they're going to talk against their landlord? No way. An interesting question was asked by the chairman of the committee about this industry. He said, "If they shouldn't be doing something, why aren't you suing them?" What was the answer? "Well we have to get along with the state and besides we can just pass it on to our customers. It is not going to cost us anything." Amazing answer. It tells you what's really going on here. Do we want to be a part of a competitive marketplace where our millions of dollars give one industry an advantage over other industries? Do you want to start doing that? I don't believe that most of my colleagues would like to be in that category. I think we should stay out of it. We as government should stay out of it. If we have a specific reason for something we want to see done like credits for R & D or those kinds of things, with a specific accountability model that says that if we give this kind of thing, it is after the fact. They do the work, they apply for the credit and they get it. And we know where the state is and getting what we want and we know the money is being spent in this state. There is no way you can tell us, or anyone can tell you, that the millions of dollars you're giving to that industry is staying in the state of New Hampshire. You can't do it. It is a big conglomerate. It is the whole northeast. It is not about money in terms of their profit. It is a money about how they are going to have control of our tax policy. Please think what you're doing on tax policy if you continue this exemption. Mr. President, I thank you for your courtesy and time. I would like to move that this amendment as presented be adopted at this time. Thank you.

SENATOR GATSAS: Senator Green, if I understood you correctly, you said that the last time there was a rate case was 1989.

SENATOR GREEN: That is correct. Full rate case.

SENATOR GATSAS: Full rate case. Do you know of any other utility in the state of New Hampshire that's not had a rate case since 1989?

SENATOR GREEN: I do not.

SENATOR GATSAS: Thank you.

SENATOR MARTEL: Thank you, Mr. President. What a way to stand up in the heat of discussion following that eloquent presentation by Senator Green. I do get up and I do oppose lifting this exemption. Many people believe that corporations get preferential treatment in only certain categories. Corporations get preferential treatment in many different areas. Up in the corporate world, I can tell you that computer corporations, when they were in their heyday in the state of New Hampshire, used to get property tax exemptions, okay, that were sold large that they gave very little back to the state and town. Money went out-of-state, it went back to their corporate headquarters and then redistributed among the corporations entities around the world. That is just one comparison. But, coming back to this particular industry, Verizon has always tried to be a good corporate neighbor, especially in the city of Manchester and I'm sure in other cities and towns here in the state of New Hampshire. Verizon not only built the Verizon Center in Manchester, the high rise in the city of Manchester next to the Verizon Building next to the city hall in Manchester. The black tower where Public Service used to be. Their building on Concord Street, okay, that they own., where they used to have their corporate headquarters out of that building years ago, and many other entities within the city and surrounding communities around the city that they actually pay taxes on. Do I believe that, because we are giving an exemption on poles and conduits, that we're giving them preferential treatment? To some individuals, that may seem so, but if I am going to weigh both sides of the issue and I am going to look, and I had this discussion with my friend Dick Green, Senator Green. While he was ill he called me, and he sounded terrible, and we discussed this for about five minutes and I told him what my position was. Verizon cannot just be singled out. It can't be the target on a continuous basis for people who don't agree with the way they do business. You have to understand that these exemptions weren't just granted to them status quo or that they just one day decided they weren't going to pay or whatever. These exemptions were negotiated. Also, the cities and towns that they may have real estate in or do business in, also have had a role in playing, in helping and working with Verizon, with their own personal communities. Always with the people in mind. I don't believe that this puts stress on those individuals okay, who may need more help in a community such as those who get tax deductions on their homes for being veterans, senior citizens, the disabled. They all receive deductions above and beyond what Verizon may even be thinking about being charged. So they're not being neglected because a company is getting a special tax exemption. This issue has come before us, well, twice in the last two years, here in the Senate and it has come before us in the House before that. It has been an ongoing situation for a while, I understand, before even my time here. I can say that sometimes a stake has to be placed in the ground, and I believe this is the time to put the stake in the ground. This bill is right. It continues the exemption and it allows them, okay, to prosper, okay, and help the state of New Hampshire in many other ways besides just getting away with this, supposedly, getting away with this tax exemption. So, Mr. President, I urge my fellow Senators to please follow me and vote with this ought to pass motion of exempting the local property tax with this bill, on Senate Bill 11. I thank you very much for your time, and I thank everyone for their time as well.

SENATOR BARNES: Thank you, Mr. President. I am a little confused, Senator Martel. I thought we were talking about the amendment. We talked about the bill. I heard Senator Green say that he wanted us to vote for this amendment.

SENATOR MARTEL: That's correct.

SENATOR BARNES: You just said you wanted to talk about the bill. So which one are we talking about?

SENATOR MARTEL: The bill as amended, as well as the original bill.

SENATOR BARNES: So you were talking about, to clear my mind up when I vote, are you in favor of this amendment that Senator Green has brought forward or are you against this amendment?

SENATOR MARTEL: I am against this amendment.

SENATOR BARNES: You're against this amendment. Thank you very much.

SENATOR MARTEL: Yes I am.

SENATOR ODELL: Thank you, Mr. President. I rise in favor of the bill and against the amendment. I rise after many months of discussion with Senator Green, my good friend. We agree on so many things and, on this particular issue, we just don't agree. Senator Green has been eloquent and he has raised this issue. As he knows, I have served on a couple of those study committees that have examined this issue. I would disagree with him heartedly that that was a whitewash. Every person that wanted to petition those committees had the opportunity to do so. We spent hours and hours and hours listening to testimony and we read dozens and dozens and dozens of pages on this issue. If I look in the gallery, I see Maura Carroll representing the Municipal Association, who certainly has been a strong advocate of lifting the exemption. Seated next to Erle Pierce, representing Verizon Telephone Company, interested in preserving the exemption. So this is not something where we haven't had adequate information and adequate opportunity. My particular concern is that, although some would say that this is a tax that's been exempted so it is not a new tax, if you are paying it for the first time, it is a new tax. And who is going to pay this? Let me give you two categories. Older people and people in rural areas. There's a school in Washington, D.C. that Lou D'Allesandro did not teach at. Every exception can be corrected. Remember, in the state of New Hampshire the number of land lines is declining dramatically as the use of cellular phones increases. This is an article about young people and cellular telephones. I underlined one line. "Across the country wired phones are becoming obsolete." In the gallery is my daughter and her friend. When they went to get a new apartment, unlike what we did years ago, they didn't have to call the telephone company and say "I've got the deposit money, will you put in a landline for me?" They just move around with that cell phone and go wherever they want to go. That means that the people who are less inclined to have a cell phone are the older folks, and they are people who aren't comfortable with a cellular telephone. So if this tax, a new tax, shows up on the telephone bills of individuals, it is going to be more and more weighted to those people who don't have the wireless phone. If you remember, this tax will be on the landline, not like we do on 911, where it is on both. This will be on the landline. So the older people will be one category of people. The second area are those of us who live and represent folks where we have these dead zones. Where, when you want to call 911 on a cell phone and you can't get through, you are very happy and blessed to have a landline. So we have some people in the state of New Hampshire who don't have a choice. Yet, as the number of landlines in the aggregate decline, those who do, who are still with the landlines, a smaller and smaller number, are disproportionately going to be responsible for this particular tax. Now the

PUC's interest in this. Remember that we created the PUC. If we don't like the way that they do their business, let's change it. That's not the discussion today though. What I want to reinforce is that, throughout all the study committees and the hearings before the Senate Energy Committee and in other circumstances, the PUC has suggested that, in all cases, taxes are a legitimate pass through. In other words, if we take away the exemption and this tax is put in place, that it is legitimate and proper that that tax can be applied to the regulated rate authorized by the Public Utilities Commission. So this is not something where the PUC has a lot of discretion. In a sense, this has been going on through the regulated industry year after year after year. So, Mr. President, I am going to vote against the amendment and vote for Senate Bill 11.

SENATOR GATSAS: Thank you, Mr. President. Senator Odell, did you have an opportunity to read Senator Green's amendment?

SENATOR ODELL: I just did this morning. Yes, sir.

SENATOR GATSAS: And would you believe that those same people that you were just talking about that were going to get taxed, the elderly and the people that can't afford cell phones, and the people that are in those dead zones, get an increase from the first \$12 to the first \$20, because he had that same concern, that he wanted to take care of those people so that tax would not be burdensome to them. So he increased their...up to \$20, the charge that could not be taxed. So that is exactly what his amendment did. The things that you were discussing, that you thought were going to hurt those people, would you believe?

SENATOR ODELL: Senator Gatsas, I wouldn't believe that with any certainty because it takes a compensating balance. I see an exemption here at \$8, a new exemption there, for the first line, but I don't know what the increase will be based upon the tax.

SENATOR GATSAS: Thank you.

SENATOR BOYCE: Actually, I've got three questions, but maybe I can reduce it to two. Having served on at least one of these study committees together, I just wanted to make sure that everybody else understood one of the things that we knew. Isn't it true that the exemption, this temporary exemption that we just confirmed it is, a temporary, that temporary exemption was originally tied to a temporary increase in the Communications Services Tax and that that temporary increase in the tax was made permanent several years ago and, at that time, it was disconnected from this temporary exemption? Wasn't that the case, that the original temporary exemption was tied to a temporary increase in the tax?

SENATOR ODELL: I think you are correct. Yes.

SENATOR BOYCE: I am pretty sure I am.

SENATOR ODELL: I think you are.

SENATOR BOYCE: I have a further question. Isn't it true that the tax reduction that's in this amendment, the credit on the...going from \$12 to \$20, that that's on the Communications Services Tax, that is the exemption there? That money flows to the state. So what this amendment is really trying to do is to give money to the local municipalities through this new tax on the poles by reducing the tax that flows to the state. So this is a back door subsidy from the state coffers to the locals by way of the phone bills.

SENATOR ODELL: That's correct. The state will lose revenue and the tax will be applied on property taxes.

SENATOR BOYCE: My third question. I will go to the third question, if I may. The fact that there wasn't a rate case did not prevent the Public Utilities Commission from causing the phone companies to reduce their rate when they had a significant decrease in their costs due to a legislation change several years ago. Isn't that the case?

SENATOR ODELL: That is correct. And anyone that sat through those hearings of the study committees saw at times, where rates did go down. Remember that many utilities do not go through full rate cases when there are adjustments in their rate. Let's say the power companies have periodic reviews of their rates and the same thing with the phone company, doesn't have to have full rate, either increase or decrease.

SENATOR BOYCE: Thank you.

SENATOR GREEN: Thank you. Senator Odell, I have a couple of questions. I concur with you that this is automatic pass through in terms of the rates. If they lose revenue, rates go up. But I also think that, if the rates go down, or if they get additional revenue, the rates are going to go down. The flow through doesn't just go one way. Is that not true? If you get additional revenues, the rates go down. If you get less revenues the rates go up.

SENATOR ODELL: If their revenues that are regulated and part of the ratemaking process, that is correct. Up or down.

SENATOR GREEN: Alright. So I have here a \$1.70 increase in their rates, in revenues I should say, in their revenues. You think this is going to flow through and decrease the phone bill?

SENATOR ODELL: Senator Green, I have read the articles about this. I haven't been at home long enough time to look into...

SENATOR GREEN: But, as a basic principle, if you get more revenue, if they are going to get more revenue by charging the other carriers on their lines, wouldn't that normally go to their revenue sides and reduce rates?

SENATOR ODELL: Only, Senator, if it is part of the ratemaking criteria. If it is revenue that is excluded from the ratemaking criteria, it would not necessarily affect the rates.

SENATOR GREEN: I will tell you that it is part of the rates.

SENATOR ODELL: That I can't speak to.

SENATOR GREEN: Thank you.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I rise to say that I think we keep losing track of what's really at stake here. One of the great privileges that I have after 14 years in the House, and I say this with great admiration for him, all 14 years, I could count on Representative Alf Jacobson standing up at some point in every major debate and reminding us what was really at stake. What's really at stake here is the relationship between the state of New Hampshire and its local communities. The state of New Hampshire gives to local communities one way to raise revenue. It is called the property tax. And yet, time and time again, in the last 13 years, we have watched as the state of New Hampshire has stuck its hand into that revenue stream and either taken out the money or diverted it in some way, so that municipalities that provide the majority of the services our people need don't have

the ability to raise revenue to do it. I share Senator Odell's passion for the future and fate of rural New Hampshire, but I also feel we've got to come to grips with the problem. The problem is we keep taking away the revenue stream that supports our local communities. We did it with the statewide property tax. As the Democratic Leader in the House, I was in the Committee of Conference that reluctantly set up the statewide property tax. That was going to be a three-year sunset deal. Good luck with that. Here we have a tax issue which, in all due respect, can no longer pass the giggle test if you try to explain it to an ordinary citizen. We have poles and wires, half of which are taxable. I don't know whether it is the north half or the south half, but one half is taxable, and the other is not because it is subject to an exemption, which frankly, I can no longer understand. I was a freshman rep in 1990 and I actually took to the floor and spoke in favor of the exemption as a temporary device, because I thought I understood what it was about. Fifteen years later, I can't say that anymore. Fifteen years later, I know it is important to return to the municipalities jurisdiction over that one revenue stream which they rely on to fund their operations, and that is the property tax. I think we lose track of that in this debate over telephonic communication and all the rate stuff. I am sorry, my eyes glaze over Mr. President after about three minutes of that discussion. But just a couple of weeks ago I was the moderator of the town of Cornish town meeting and I know how tough it is for little towns to raise the revenue they need to buy fire trucks and set aside conservation easements and do all those wonderful things that our towns do. We need to let go of New Hampshire's rapacious grasp at the property tax. We need to bear in mind what's happening on the other side of this dividing wall. The property tax is not going down. The statewide property tax is not being eliminated. The statewide property tax is being raised by people in education funding bills. I think it is time that we own up to the fact that we owe the cities and towns exclusive jurisdiction over the property tax revenues, and I think it is about time that we acted fairly about that. I thank you for your patience.

SENATOR LETOURNEAU: Thank you, Mr. President. Thank you, Senator Burling, for taking my question. You spoke about the state taking away from the local municipalities this tax base. Did the local municipalities ever have this tax base? Were they ever taxing these poles before?

SENATOR BURLING: Well, the history as you know, does not include their taxing these properties before. But now we know that these assets, the physical pole, the physical wire, this is real property. The courts of this state have now said it is real estate. It is real estate which is part of the property that each individual community should be able to tax. My point is simply this. Half of that system of poles and wires is now taxable as real estate. How long can we maintain the fiction that somehow the other half shouldn't be? It is property. It is real property. It should be subject to real property taxation by our local communities. That's all I'm saying.

SENATOR LETOURNEAU: So, what you're saying is that they really never taxed it before, it was a state tax as we know it, and the state made the exemption?

SENATOR BURLING: Thank you for your question. I will say this again as best I can. In 1990, we began to change the rules relative to taxation of this system. We put an exemption in place on a temporary basis in 1990. In the intervening period, the courts have ruled that these assets, the poles, the wires, the stuff that is hanging up there in the air, I was

a fireman for 15 years, I used to have to go look at when it was all down in the road, all of that is real property. It should be taxable by the local municipalities and it should be taxable, I believe, as part of our covenants with the cities and towns that they get this revenue stream, the real property tax, in order to pay for their municipal services. I will make the point, which is obvious to everybody, it is usually the local fire department that is there trying to deal with what happens when the wires go down in the road. Thank you for your question.

SENATOR LETOURNEAU: Thank you. I take it that your answer is no, they didn't tax them before?

SENATOR BURLING: Senator, that is the history, but the history is also that this is real property, which should be taxable by the municipalities.

SENATOR GREEN: I will be brief, but I think, as you cast your vote, let me just remind you of two things. There is a fairness doctrine in taxation. It is in the Constitution. It says all taxes shall be reasonable and proportional. This tax is not proportional, because Public Service pays it, the gas companies pay it, all of the utilities pay it. It is not proportional. We have one exception, telecommunications. So, the fairness issue is a major issue in tax policy as it relates to how our government is set up. The second thing I want to raise, and I think it is so critical that sometimes you miss the boat. I understand that this policy has effects on local communities, and I support not taking away their tax base. But, I also want to remind you, all of you, that we are talking about state revenue here, too. We are talking about millions of dollars of state revenues. We are all running around here trying to figure out how we're going to balance this budget. We're going to carve our little piece here and say that we can't touch that piece? Huh? We're going to do other things. We're going to do gambling. That's okay. We're going to increase the business profits tax and the business enterprise tax. That's okay. But you got million dollars facing you, looking at you and you think that that is not important to us balancing a budget? You are going to hear other things today about we are trying to figure out ways to identify revenue without going to a major tax. I don't want an income tax. I don't want a sales tax. But you've got to give us something or you're going to start cutting services. And you want to have that blood bath, we're going to have a heck of a time on those. You try it, all of you. It is just not going to happen. The House over here can't balance their budget yet. They can't balance it. They can't get there. They haven't got enough revenue. And they don't have the heart and the desire and the will to make the kinds of cuts that have got to be made to balance that budget without revenue. So, what are you saying? That we're going to fight the battle of revenue and expenditures, but we're going to give one little industry a special, special deal, that they don't have to contribute to our revenue problem. Boy, that is really sending a message to the public that we believe that that one industry, private making corporation, who makes billions of dollars in profit, is more important than us balancing our budget and taking care of our major responsibilities in this state. I think it is a bad message to be sending home to your property taxpayers and to the residents and voters of this state, that we, as a Senate, really send the message that a tax exemption for a corporation is more important than taking care of the business. I think it is the wrong message. I will sit down. I have made my case. I know some of you don't agree with me and that's fine, but I am telling you that you're sending the wrong message.

SENATOR LARSEN: Mr. President, I did want to speak to Senate Bill 11 and the amendment before us. I think it is an amendment which in fact does address the issue of pass ons to those least able to carry an increased cost in their telephone tax or telephone bills. So I think it is a very good amendment. I believe that, as we are addressing this issue in total, I would also add that, over the years I have supported this exemption. I've believed that there was some agreement made before I got here, that I heard was a trade off. Communications tax for property tax. But, as I have supported that over the years, I have watched it go on and on and I have come to believe that in fact the property taxpayers are subsidizing a corporation. That is not to say that that corporation is not a good public citizen. They are. They are friends of ours. They do a good job being friends of ours, but there comes a point, I believe, when we cannot grant special exemptions to friends. PSNH is a good corporate citizen overall, yet that very same pole which carries the PSNH wire carries a Verizon wire and we exempt one corporation from property taxation. Having been at the city council level, I know how difficult it is to balance a budget. I know that an exemption given to one means that the others pick up the cost. I think it is time that we spread the costs. That we recognize that everyone pays their fair share in a community and special exemptions, while you may grant them for need, I don't see the need here on this. So that is my position, both on the amendment and the bill. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the amendment and for the bill. This has been my position for a number of years. I think all of you know that, so it is no surprise. First of all I would like to say to my colleague, Senator Green, he is articulate, he does a wonderful job as a statesman in representing his constituency. He knows where I've been on this issue. I know where he has been on this issue. We have discussed and debated this issue for a number of years. I think the quality of the debate has risen, and I think that's very important. We want quality debate before this chamber. We want people to understand the issue. We want them to vote on the issue based on the facts and based on what is significant public policy and what makes sense, not only for their constituencies, but for the state of New Hampshire as a whole. In 1990, the state of New Hampshire was in need of finances. The state of New Hampshire met with the telephone companies. This thing about Verizon, Verizon did not exist in 1990. It did not exist. New England Telephone became Nynex, became Bell Atlantic, became Verizon. Why? Because Judge Green decided the telephone companies were too big, AT & T was too big. They needed to be cut up. They needed to be diversified. So what happened? All of these companies had to reformulate themselves, reconstruct themselves, and serve the public. Full disclosure, Mrs. Patricia D'Allesandro worked for New England Telephone Company. Why? Because her husband only made \$5,000 a year coaching at Bishop Bradley High School and we couldn't make ends meet. So, my wife became a business rep for New England Tel. She went from New England Tel to Nynex, to Bell Atlantic, to Verizon. She is a retired employee of Verizon. Verizon pays good wages, has good benefits and the city of Manchester and the 20th Senate district has been very, very supportive of the telephone company. They have done good things for my community. We have a center in New Hampshire called the Verizon Center. Where is it? It is in Manchester. Who paid for the naming rights? Verizon paid for the naming rights. When we needed \$26,000 for Newline for the Blind, where did we go to get the money? We went to the Verizon

charity because we couldn't find it within our budget to come up with \$26,000. So they are good corporate citizens. They are good jobs. Those good jobs are in our area. Does the telephone company and all of the telephone companies pay their fair share? You bet your life they do. They pay taxes on their property, they register their vehicles, they pay the business profits tax. They pay the business enterprise tax. Brother, they pay their taxes and they are good corporate citizens. In 1990, when we made this arrangement, we said we were going to give the 3 percent tax and there is going to be a 2 percent surcharge. In the last budget, we made that a 7 percent permanent tax. We did it. We voted on that. It is a 7 percent permanent tax. We know, all of us, that the federal government has passed legislation which is going to significantly affect telecommunications in this state. We will lose for the next biennium, \$14 million in revenue. You know that. That money is disappearing because of the fact that our communications tax, which is a plug-in plug-out tax, will now have to exempt internet, voice over data. That is gone. That is going to cost us \$14 million. We know, and I served on both of those study committees, and anybody who says that Susan Almy, and we all know Susan Almy. The only thing Susan Almy agrees with me on is that the sun rose today. And sometimes I even question that. She saw me in the elevator yesterday, Senator Clegg, and she said to me, "how dare you schedule a one o'clock meeting of Ways and Means. You took two people who I needed to exec." I said, "Susan, we have been doing this since the Senate started. That is when Ways and Means meets. I didn't have anything to do with taking people out of your committee." So we don't agree on that. Susan Almy was on both of these committees. Susan Almy was in favor of extending the exemption. The people who worked on those committees worked hard. We listened to people. We listened to Maura. We listened to all of these experts who came in. The one thing we found out was, if a property tax were assessed, it wouldn't be uniform because one community would assess it one way, another community would assess it another way, and there was no way to find out how the damn thing was going to be done. So we took the results of an exhaustive study and we said the exemption should remain. Everybody in this chamber knows, for the next biennium, the world changes. The world changes dramatically. That communications tax, which has been very good for New Hampshire, is going to change and we are going to have to make significant decisions. I think we should remain in the posture that we have had since 1990. The relationship has been a good one. The people of New Hampshire have benefited from it, and we should move forward. Thank you, Mr. President.

SENATOR BARNES: Not a question, Mr. President. I would like to make the request, after you hear the folks that you have already listed to speak, that we move the question.

SENATOR GREEN: Senator D'Allesandro, here we are again. I would just like to ask you this question. You made reference to the fact that every community will assess the phone assets differently. Is that not true the way its done for the Public Service Company now? Isn't there is a system in place already to do that?

SENATOR D'ALLESANDRO: I really don't know the answer to that Senator Green, but what we were told in the committee was that each assessor would come in and look at it and look at it differently. That is to the best of my knowledge. You may have better information than I.

SENATOR GREEN: Would you believe that is the way that it is done now with the Public Service Company?

SENATOR D'ALLESANDRO: I would.

SENATOR GREEN: The system is in place.

SENATOR D'ALLESANDRO: I would believe it because you said it.

SENATOR GREEN: Thank you. Further question? Do you know how much money Verizon pays in business profits tax?

SENATOR D'ALLESANDRO: I do not. I don't think that that is public record. I mean, I thought that tax returns were private.

SENATOR GREEN: Yes, but do you know?

SENATOR D'ALLESANDRO: No, I don't.

SENATOR GREEN: You do not know?

SENATOR D'ALLESANDRO: No, I do not know.

SENATOR GREEN: If I told you they did not pay very much in business profits tax, would you believe me?

SENATOR D'ALLESANDRO: As I said Senator, you have credibility with me. I'd believe anything you said. Almost anything you say.

SENATOR GREEN: Thank you.

SENATOR GATSAS: Thank you, Mr. President. I stand before you today first to remind my two colleagues from Manchester that that is the Verizon Wireless Arena, and that the good taxpayers in the city of Manchester paid for that debt service. There is no question that Verizon Wireless had the opportunity to buy naming rights. But I don't think that's what we are here discussing, and certainly nobody is going to argue that Verizon is a great corporate partner. They are always there whenever you need them. I don't think that that is at all a question. In 1990, obviously the Legislature, in their infinite wisdom, decided they were going to put a communication tax in place. They also instituted a \$12 credit for residential phone lines. Now, that must have been done for a reason, probably the same reason that Senator Odell was speaking about how it was going to affect the people that could least afford it. There is no question that what we do up here sometimes we make mistakes. When we make those mistakes, we come back and we try to correct them because none of us are perfect, no body before us has been perfect, no body after us, I will assume, will be perfect. When I hear somebody saying to me that there has never been a rate case since 1989, and no other utility has gone that long without a rate case, I start asking the question, how can that possibly be? Now, if the mailing that Senator Green got that was from AT & T that said that there is a \$1.70 that is being charged, and Senator Odell said, well you know that may not participate in reduction of rates because it is income and it doesn't pertain to a rate case. I can't tell you those things. But I think it is time that we at least take a look at what that revenue is because there is no question we've heard from the people for Verizon telling us that it could be \$3 or \$4 million. I have heard from our city assessor that it could be \$3 or \$4 million to the city of Manchester. Senator D'Allesandro very eloquently spoke that there is not uniform rate setting. Well I think that PSNH has that same problem. We've adjusted for that. I think it is time that we get an honest answer. Senator Green, and I don't think that Senator Green is telling us when he says \$30 million, I think that is his best estimate. Just as we are told by Verizon it is \$4 or \$5

million and that is their best estimate. But we don't know what that effect is to the local communities. We truly do not know. And Senator Green is right, we are all grappling with how are we going to balance the budget without affecting services to people that really need it? Now again, I compliment Verizon because they are a great corporate partner. But we should find out at what point this tax is - whether it is \$4 million or whether it is \$40 million. And, it happens to be \$40 million, and Verizon says it has a problem, then maybe at that point we, as a legislature, have an ability to adjust it, cause God knows, we have done that for other utilities. So I think it is appropriate that Senator Green brings forward an amendment that increases the \$12 exemption to \$20. He took those people in mind. I think it is time we find out the truth and find out where we are with the amount of revenue that this creates. Thank you very much, Mr. President.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Green.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Burling, Green, Roberge, Larsen, Gatsas, Barnes, Estabrook, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Flanders, Odell, Eaton, Bragdon, Gottesman, Clegg, Martel, Letourneau, D'Allesandro, Morse, Hassan.

Yeas: 9 - Nays: 14

Senator Foster rule #42.

Floor amendment failed.

The question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

SB 94-FN-A-L, prohibiting the taxation of internet access and internet activities under the communications services tax and repealing the local property tax exemption for wooden poles and conduits. Energy and Economic Development Committee. Inexpedient to legislate, Vote 3-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. Hopefully, this will be quicker than the last. I move Senate Bill 94 inexpedient to legislate. Senate Bill 94 prohibits taxation of the Internet access and repeals the local property tax exemption of wooden poles and conduits. While the committee supports the prohibition of taxation of the internet services, under recent federal legislation, the grandfathering of our application to CST to internet access will end soon; therefore, this bill is not needed. Please support the Energy and Economic Development Committee's motion of inexpedient to legislate. Thank you.

SENATOR GREEN: I would like to offer an amendment please.

SENATOR EATON (In the Chair): We have to vote on the amendment of inexpedient to legislate before we can take an amendment.

SENATOR GREEN: Which amendment, to this bill?

SENATOR EATON (In the Chair): Yes. It has to be voted up...it has to be defeated before we could take an amendment.

SENATOR GREEN: Thank you.

Committee report of inexpedient to legislate is adopted.

SENATOR GREEN: Thank you. May I offer an amendment now, Mr. President?

SENATOR EATON (In the Chair): No.

SENATOR GREEN: I tried to offer an amendment before and you wouldn't let me.

SENATOR EATON (In the Chair): You can't take an amendment on an inexpedient to legislate bill.

SENATOR GREEN: Okay. Thank you.

SENATOR EATON (In the Chair): That's why I said it had to be overturned first.

Senator Foster rule #42.

COMMITTEE REPORTS

SB 111, relative to persons conducting securities broker-dealer and investment advisor businesses. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you very much, Mr. President. By golly, this is an easy one. I move Senate Bill 111 ought to pass. This bill would require people who hold several securities licenses, or who are licensed by the Insurance Department, to provide clients with a clear understanding of which products and activities fall under each license. The Banks and Insurance Committee asks your support for the motion of ought to pass and I would appreciate the rest of the body joining with us. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 175, requiring insurance coverage for certified midwives. Banks and Insurance Committee. Ought to pass, Vote 4-2. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 175 ought to pass. This bill would require insurance companies to reimburse patients who chose to utilize the services of a midwife. Presently this service is authorized under New Hampshire law by virtue of RSA 326-D and providing qualifications under section 7. We are witnessing a huge savings with Medicaid presently, and smaller insurance companies have agreed to pay for these services. The state has already said that this practice is accepted and safe, and these cases are handled under the supervision and contact with the medical professional in the field. Unless this is passed, birthing centers are being forced to close their doors due to lack of large insurance companies granting insurance reimbursements. Midwives only take low risk women and these birthing centers are minutes away from a hospital if a complication may occur. The Banks and Insurance Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 35-FN, relative to the transfer of certain real property of the youth development center in Manchester for a charter school for children with autism. Capital Budget Committee. Inexpedient to legislate, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 35 inexpedient to legislate. This bill directs the Department of Health and Human Services to transfer ten acres of the Youth Development Center's campus in Manchester to the Hope for Autism for the purpose of establishing a charter school for children with autism. While well intentioned, this legislation would create precedent for the state by transferring state owned property to a private organization. In addition, transferring property as outlined in this bill would imply a long-term agreement for the charter school and would exceed the ten-year pilot period set forth in the charter school statutes. While the charter school group has laudable intentions, the committee feels this legislation is not the appropriate avenue for carrying out those goals. The Capital Budget Committee asks for your support on the motion of inexpedient to legislate.

SENATOR MARTEL: Thank you, Mr. President. I am not rising to try to overturn the inexpedient to legislate motion on this bill. I rise to make sure that we can speak about serious and ever-growing medical problem that is affecting our daily lives every day. Autistic children are probably the most misunderstood, ill people in this country and probably around the world. Autism is a devastating, serious disease that really damages everyone. The reasoning for wanting to get the ten acres of land at the YDC land was to promote a school to care for these autistic kids and to mainstream them with a certain amount of mainstreaming children to go to school with them, a total of 48 in all. I understand the value of the land at the YDC. I understand the controversies that could have arose from people not really understanding that what autistic children really are and that there would be a problem for the neighborhood. I can understand all that. I can understand the value of that land especially. I came back to the people who asked me to file this legislation and mentioned to them that they would probably have to look at alternative sites in order to fulfill their dream to have a location for those children who are in most need. They are being neglected and I think this sets them back. I don't think this is the final epitaph, okay for this story. We will come back with this bill at some future time. It will be a better offer. It will be a better situation. I just want people to understand that autistic children can no longer just be kept in the corner. I know that my fellow Senators here know that and they don't have any notions, okay, that that's what we should be doing. I am just saying that people in general, in society, that's the way autistic children are treated. Many times they are misunderstood. They need our help. This was a way to try to get that. So again, I am not asking you to overturn the inexpedient to legislate. I do understand why this was done. I urge you to please vote according to the committee. Thank you very much, Mr. President.

Committee report of inexpedient to legislate is adopted.

Recess.

Out of recess.

SB 127-FN, relative to the regional community-technical college system's acquisition of the building currently leased from the Pease development authority. Capital Budget Committee. Ought to pass, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 127 ought to pass. This legislation as proposed allows the community technical college to own the property they are currently leasing from the Pease Development Authority. The agreement allows a one-time debt reduction against the amount that the Pease Development Authority owes the state. This will allow for better long range planning for the community technical college and further anchor the college at Pease. In addition, this agreement will contribute to the growing economy on the Seacoast. Having sponsored previous legislation to allow the original lease agreement between the Pease Development Authority and the community technical college, I am pleased to move that this bill ought to pass and the committee asks for your support. Mr. President, I understand that there will be an amendment coming forward on the bill.

Senator Odell offered a floor amendment.

Sen. Odell, Dist. 8

March 16, 2005

2005-0695s

05/01

Floor Amendment to SB 127

Amend the bill by replacing all after the enacting clause with the following:

1 Acquisition of Property by Regional Community-Technical College System.

I. The department of regional community-technical colleges shall acquire the building located on the premises at 320 Corporate Drive, Portsmouth, New Hampshire, from the Pease development authority for fair market appraised value, not to exceed \$3,800,000. Prior to acquisition by the department of regional community-technical colleges, the Pease development authority shall obtain required federal approval for the sale proceeds to be used to reduce the Pease development authority's outstanding debt to the state.

II. Prior to acquisition by the department of regional community-technical colleges, and notwithstanding any other provision of law, the department of regional community-technical colleges and the Pease development authority shall negotiate and execute a ground lease, for a term of not less than 20 years at fair market value, not to exceed \$13,000 per acre at the start of the ground lease, for the approximately 13 acres on which the building known as 320 Corporate Drive is located. Such ground lease shall be subject to the approval of the governor and council.

III. If the department of regional community-technical colleges cannot acquire the building known as 320 Corporate Drive on or before July 1, 2005, the department of regional community-technical colleges and the Pease development authority shall enter into a lease agreement for the entirety of the building known as 320 Corporate Drive. In exchange, the state shall reduce by \$675, 000 per year, starting with the commencement of the lease on July 1, 2005, the Pease development authority's debt owed to the state relative to start-up funding costs under RSA 12-G:33 through 12-G:35; and 1991, 355:110, as amended by 1992, 260:11; 1992, 260:12, as amended by 1993, 358:3; 1994, 415:1; and 1995, 307:10. The lease term shall be 2 years or until such time as the acquisition by the department of regional community-technical colleges is complete or until such time as the debt owed to the state relative to the authority's start-up funding costs has been exhausted. In the event the regional community-technical college acquires the building known as

320 Corporate Drive after July 1, 2005 but before June 30, 2006, the proceeds from sale by the Pease development authority to the department of regional community-technical colleges shall be prorated.

IV. Any acquisition or lease agreement executed under this section shall supersede any existing lease arrangement for the property between the department of regional community-technical colleges and the Pease development authority.

2 Effective Date. This act shall take effect July 1, 2005.

2005-0695s

AMENDED ANALYSIS

This bill provides for the department of regional community-technical colleges to acquire or lease certain property from the Pease development authority. The bill also provides that proceeds from the sale or lease shall be used to reduce the authority's debt owed to the state.

SENATOR ODELL: Thank you, Mr. President. As colleagues will note in the original bill, it clearly states the purchase dynamics, but it was found to be necessary to include some explanations and added details. So what you will see in the floor amendment that is being distributed now is that the amendment changes the purchase price of the building from simply \$3.8 million to an amount not to exceed \$3.8 million. The facility has been appraised at \$3.8 and had a confirming appraisal. However, in the event this transaction is delayed for any reason after the bill passes, and the fair market value price rises, the state is not obligated for any purchase price greater than the \$3.8 million. The amendment also outlines the Pease Development Authority's requirement to obtain an FAA approval of this transaction. As you know, part of the Pease Development Agency's mission is to create a revenue stream for the airport through income from the entities located at the Trade Port. FAA acceptance of this transaction is required and the Pease Development Authority is currently engaged in that process. The amendment also sets out the maximum per acre cost of the ground lease, again, a not to exceed figure. And then if the transaction is not completed by July 1 of 2005, this amendment outlines the costs to occupy the building on a lease basis and includes the provision from the original bill that rather than being a direct payment, that amount will be used to reduce the Pease Development Authority's outstanding debt to the state. Thank you, Mr. President.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 161, relative to certain licenses issued by the liquor commission. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 6-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 161 inexpedient to legislate. The committee heard from the Liquor Commissioner that he had spoken with the prime sponsor and came to the conclusion that the bill was not needed at this time. The ED&A Committee asks your support for the motion of inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 173, relative to exceptions to licensure for electricians. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. I move Senate Bill 173 ought to pass. This extends the apprentice program for electricians into commercial wiring. Presently, any apprentice in this type of program could only work in household wiring. We are asking that you expand it into the commercial wiring because this is where the real world of wiring is in the future. The ED&A Committee asks your support on the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 19, relative to qualifications to sell lottery tickets. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary

March 10, 2005

2005-0552s

10/05

Amendment to SB 19

Amend the title of the bill by replacing it with the following:

AN ACT relative to qualifications to sell lottery, bingo, and lucky 7 tickets.

Amend the bill by replacing all after the enacting clause with the following:

1 Qualifications to Sell Lottery Tickets. Amend RSA 284:21-h, II(e) to read as follows:

(e) Persons who have been convicted of a felony *within the previous 10 years which has not been annulled by a court, or a misdemeanor involving falsehood or dishonesty within the previous 5 years which has not been annulled by a court*, shall not be allowed to sell lottery tickets.

2 Bingo and Lucky 7; Licenses; Ticket Sales. Amend RSA 287-E:5, V(c) to read as follows:

(c) That neither the applicant nor any member of the charitable organization who will be participating in the operation of the bingo games and sale of lucky 7 tickets has been convicted of a felony [~~or class A misdemeanor~~] within the previous 10 years which has not been annulled by a court, or a [~~class B~~] misdemeanor *involving falsehood or dishonesty* within the [~~past~~] *previous* 5 years which has not been annulled by a court, or has violated the statutes or rules governing charitable gambling.

3 Effective Date. This act shall take effect January 1, 2006.

2005-0552s

AMENDED ANALYSIS

This bill restricts people who have been convicted of misdemeanors involving falsehood or dishonesty from selling lottery, bingo, or lucky 7 tickets.

SENATOR FOSTER: Thank you, Mr. President. I move Senate Bill 19 ought to pass with amendment. Senate Bill 19 is relative to the qualifications to sell lottery tickets and was filed at the request of the Sweepstakes Commission. The committee had concerns with the original draft of the bill because it would have prohibited persons convicted of any

misdemeanor, including ones not involved in dishonesty from selling tickets. For example, a person convicted of simple assault would not be able to sell lottery tickets. This seemed too restrictive and unnecessary. The committee amendment provides that only those who have been convicted of a felony within the previous ten years which has not been annulled by a court, or a misdemeanor involving a falsehood or dishonesty within the past five years which has not been annulled by the court may sell lottery tickets. Parallel language is put into RSA 275-E:5 V(c), (sic) the legislation adopted last year regarding bingo and Lucky 7. The Judiciary Committee recommends that the bill be adopted with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 46, relative to the duties of law enforcement officials upon receiving reports of missing adults. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary

March 10, 2005

2005-0549s

09/01

Amendment to SB 46

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Chapter; Missing Adults. Amend RSA by inserting after chapter 106-H the following new chapter:

CHAPTER 106-I

MISSING ADULTS

106-I:1 Definitions. In this chapter, "missing adult" means any person:

I. Who is 18 years of age or older;
II. Whose residence is in New Hampshire or is believed to be in New Hampshire;

III. Who has been reported to a law enforcement agency as missing;
and

IV. Who falls within one of the following categories:

(a) The person is under proven physical or mental disability or is senile, thereby subjecting himself or herself or others to personal and immediate danger;

(b) The circumstances indicate that the person's physical safety may be in danger;

(c) The circumstances indicate that the person's disappearance may not have been voluntary;

(d) The person is missing after a catastrophe; or

(e) The person does not meet any of above criteria but there is reasonable concern for the person's safety.

106-I:2 Procedures.

I. Upon receiving notice of a missing adult, a law enforcement agency shall complete a missing person report and immediately provide identifying and descriptive information about the missing adult to the National Crime Information Center (NCIC) for inclusion in the missing person file of its computerized database.

II. It shall be the duty of the initial investigating law enforcement agency to immediately notify the NCIC when the missing adult is located or returned.

III. No law enforcement agency shall delay providing the missing person's information to the NCIC based on an agency rule or policy which specifies an automatic waiting period.

2005-0549s

AMENDED ANALYSIS

This bill requires the attorney general to establish uniform procedures for law enforcement officials when receiving reports of missing adults.

The bill also requires law enforcement agencies to immediately complete a missing person report and provide identifying and descriptive information to the National Crime Information Center, if an adult is reported missing under certain circumstances.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 46 ought to pass with amendment. Senate Bill 46 deals with the duties of law enforcement officials upon receiving reports of missing adults. All states have access to the National Crime Information Center and there is no cost to a police department to enter a missing person into the system. Unfortunately, not all officers or department policies require that these reports be entered. The committee amendment provides a definition of a missing adult and establishes a protocol for notification if or when a missing adult is found. The language in the amendment was provided by the Attorney General's Office. The Judiciary Committee recommends that the bill be adopted with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SENATOR BARNES: Thank you, Mr. President. I just want to thank the committee and the rest of the body for passing this bill. It means a lot to one of my constituents. Thank you very much.

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Foster for the committee.

Senate Judiciary

March 10, 2005

2005-0548s

09/01

Amendment to SB 60

Amend RSA 463-A:6, III(c) as inserted by section 1 of the bill by replacing it with the following:

(c) The transfer is ~~[authorized by the court if it exceeds]~~ ***less than or equal to \$10,000 in value; otherwise a guardianship over the estate of the minor shall be required by the probate court pursuant to RSA 463, unless otherwise ordered by the court.***

SENATOR FOSTER: Thank you, Mr. President. I move SB 60 ought to pass with amendment. Senate Bill 60 clarifies probate court procedures in cases involving the Uniform Transfers to Minors Act and was requested by the Probate Court as a the result of the collaboration of their judges,

court staff and practicing attorneys. The bill clarifies existing law which already requires that when a gift in value is over \$10,000 is given to a minor, a guardianship over the estate of the minor is required. This protects the minor's assets from being misused or misappropriated by a parent or other guardian. The amendment permits the court in appropriate circumstances for the requirement to be waived. The Judiciary Committee recommends that the bill be adopted with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 102-FN, relative to the unlawful possession and consumption of alcoholic beverages by persons under 21 years of age. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Clegg for the committee.

Senate Judiciary

March 10, 2005

2005-0551s

03/01

Amendment to SB 102-FN

Amend the title of the bill by replacing it with the following:

AN ACT limiting liability for failure to arrest persons under 21 years of age illegally transporting alcoholic beverages.

Amend the bill by replacing all after the enacting clause with the following:

1 Alcoholic Beverages; Seizure; Liability Limited. Amend RSA 179:2 to read as follows:

179:2 Seizure. Any beverage or liquor possessed, kept for sale, or transported in violation of the provisions of this title or any law of the state, together with the casks, bottles, or other paraphernalia used in such illegal possession, keeping, or transportation, shall be subject to seizure either upon a warrant issued upon a complaint against the person charged with violating the law, and containing a command for such seizure, or upon a libel directed against the property, filed in accordance with the provisions of RSA 617, and upon due proceedings may be adjudged forfeited. When any sheriff or deputy sheriff, duly appointed police officer or constable of any city or town, or other duly appointed law enforcement officer, shall discover any person in the act of transporting beverages or liquor in violation of this chapter or any other law of this state, in any wagon, buggy, automobile, watercraft, aircraft, or other vehicle, or any other conveyance, it shall be his **or her** duty to seize all beverage and liquor found therein being transported contrary to law. No officer shall, without a warrant, cause any automobile or other vehicle traveling upon a public highway in this state to be stopped for the purpose of searching the same for beverages or liquor unless [he] **the officer** has reasonable cause to believe that such automobile or other vehicle is, at the time of said stopping or search, being used for the illegal transportation of beverage or liquor. Whenever beverage or liquor being illegally transported shall be seized by an officer, [he] **the officer** shall take possession of any vehicle, team,

automobile, boat, aircraft, watercraft, or any other conveyance engaged in such illegal transportation, and shall arrest any person or persons in charge of such transportation; ***provided, however, that failure to arrest a person pursuant to this section for violating RSA 179:10 shall not give rise to any liability if such failure is pursuant to an established policy of the officer's department.*** Such officer shall at once proceed against the person or persons arrested under the provisions of this chapter in any court having competent jurisdiction, and the vehicle or conveyance, on due proceedings in accordance with the provisions of RSA 617, may be adjudged forfeited, unless by intervention or otherwise at hearing, or in some other proceeding brought for the purpose, a lien or liens shall be established to have been created without notice that such vehicle was being used or was to be used for the illegal transportation of beverage or liquor. The vehicle may be ordered sold by the court, and the proceeds of the sale, after deducting the expenses of keeping and sale, used for the purpose of paying such liens in the order of their priority, and the balance disposed of as provided in RSA 179:3. If a lien or liens shall be established in excess of the value of such vehicle, the court shall order its surrender to the first lienholder upon payment of costs of seizure, but subsequent lienholders shall have the right of redemption in the order of their liens upon satisfaction of prior liens and charges, provided such right is asserted within such time as the court shall fix in its order of surrender.

2 Effective Date. This act shall take effect January 1, 2006.

2005-0551s

AMENDED ANALYSIS

This bill limits liability for failure to arrest persons under 21 years of age for illegally transporting alcoholic beverages, if such failure is pursuant to an established policy of the officer's department.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 102-FN ought to pass with amendment. Senate Bill 102 as introduced dealt with the consumption of alcoholic beverages by persons under 21 years of age. It would have allowed conviction of a violation without proof of intoxication which the committee felt was unwise. The committee amendment removes the text of the bill and deals with a liability of officers who fail to arrest or detain. Because of the ruling in Weldy v. Town of Kingston, there is a liability concern if an officer does not take action when noticing alcohol on the breath of an underage person. The committee amendment provides that failure to arrest a person pursuant to RSA 179:2 shall not give rise to any liability "if" such failure is pursuant to an established policy of the officer's department. The Judiciary Committee recommends that the bill be adopted with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 106-FN, making unauthorized recording in a motion picture theater a crime. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Gottesman for the committee.

Senate Judiciary
March 10, 2005
2005-0550s
09/01

Amendment to SB 106-FN

Amend RSA 644:19, IV-VII as inserted by section 2 of the bill by replacing them with the following:

IV. This section does not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent, of the local, state, or federal government or a duly authorized private investigator, from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

V. This section does not apply to a person who operates the audiovisual recording function of a device in a retail establishment solely to demonstrate the use of that device for sales purposes.

VI. Nothing in this section prevents prosecution, instead of prosecution pursuant to this section, under any provision of law providing for a greater penalty.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 106-FN ought to pass with amendment. Senate Bill 106 criminalizes taking unauthorized recordings in a motion picture theater. Private copies of new movies are showing up on the internet as soon as they are released. The bill in no way criminalizes persons who purchase the pirated copies, but deliberately targets those who are stealing these copies and negatively impacting video rentals and movie attendance. The committee amendment protects individuals who are performing authorized surveillances or those who may accidentally record as part of a sales demonstration. The committee recommends this bill with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 156-FN, relative to criminal trespass. Judiciary Committee. Ought to pass with amendment, Vote 3-0. Senator Foster for the committee.

Senate Judiciary
March 10, 2005
2005-0547s
09/01

Amendment to SB 156-FN

Amend RSA 635:2, II as inserted by section 1 of the bill by replacing it with the following:

II. Criminal trespass is a class B felony if the person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

2005-0547s

AMENDED ANALYSIS

This bill establishes the crime of felony criminal trespass if a person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another.

SENATOR FOSTER: Thank you, Mr. President. I move SB 156-FN ought to pass with amendment. Senate Bill 156 as amended would establish the crime of felony criminal trespass when a person knowingly or recklessly causes damage in excess of \$1,000 to the value of the property of another. Testimony received at the public hearing revealed what appears to be an increase in damage to private lands. While that 85 percent of the land in New Hampshire is in private ownership, we currently do not have the ability to protect these owners from the damage of this type because the existing crime of criminal mischief requires proof the perpetrator went out intending to commit damage to another's property. The fear is that without better protection, private landowners may be afraid to open their lands for public use. This would have a serious negative impact on snowmobilers and others who enjoy outdoor recreation. The committee amendment adds the terms "knowingly or recklessly" as the state of mind necessary to prove the crime. The Judiciary Committee recommends the bill with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act. Judiciary Committee. Ought to pass, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 184-FN ought to pass. This bill recodifies the state's Uniform Child Custody Jurisdiction Act that was adopted in 1969 and replaces it with the updated Uniform Child Custody Jurisdiction and Enforcement Act. This legislation has been adopted by a number of states. The Uniform Act have been more successful in reducing the risk of courts of different states entering inconsistent custody orders. The bill also adds enforcement provisions placing this responsibility with the Attorney General and the county attorneys. The committee did seek input on this issue from the likely stakeholders and on provisions dealing with the award of attorneys' fees to prevailing parties. No input was forthcoming. This could mean the provisions are acceptable and, if not, the committee expects the issue will be raised in Finance or later in the House. The committee supports the policies in the bill and recommends that SB 184 be adopted. Thank you.

Adopted.

Ordered to third reading.

SB 207-FN, establishing the crime of assault against the elderly. Judiciary Committee. Re-refer to committee, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move that SB 207-FN be re-referred to committee. While the committee supports the sponsor's intentions of providing additional protections for the elderly who are dependent upon those who care for them, testimony at the public hearing indicating the bill as introduced might inadvertently allow for less harsh penalties. There were also concerns with the legislation because the verbal and physical abuse provisions as written would have permitted

charges even in situations where no dependency or special relationship existed between the older victim and younger perpetrator. The committee would like to continue to work to address these concerns. Therefore, the committee asks that this bill be re-referred to committee. Thank you.

Adopted.

SB 207-FN is re-referred to the Judiciary Committee.

SB 130-FN, relative to the "Nursing Home Residents Bill of Rights." Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 3-2. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move Senate Bill 130-FN inexpedient to legislate. Senate Bill 130 is a well-intentioned bill that seeks to outline the use of family councils in the nursing homes in this state. However, the bill is redundant as family councils are already provided for in the federal laws that govern nursing homes. In short, this piece of legislation is not needed due to existing federal legislation. The Public and Municipal Affairs Committee recommended a vote of inexpedient to legislate for this bill and I urge you to follow that recommendation and I thank you very much, Mr. President.

SENATOR LARSEN: I rise to speak against the motion of inexpedient to legislate. As a sponsor of Senate Bill 130, I would acknowledge that there is a federal law that requires the creation or that nursing homes permit the creation of family councils. The problem in New Hampshire is that most people don't know that, as they put someone into a nursing home, that they have this right because there is no requirement to inform you when you enter a nursing home that you have the right, as a family, to oversee what is going on in that nursing home, create a family council, bond with perhaps other families. The idea of this was in fact to educate the families. The nursing home ombudsman and the Department of Health and Human Services supported this bill, as did the AARP. We did hear from some of the association of counties that there were issues, and so I mostly rise to point out that I think that this may be a bill which we will hear more about in the future and it is an issue which in fact we do need to inform families that they have this right. So I believe that this will be an issue you'll hear more about in the future. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

March 9, 2005

2005-0543s

08/09

Amendment to SB 176

Amend the bill by replacing section 1 with the following:

1 Transfer of Appropriations. Amend RSA 32:10, I(e) to read as follows:

(e) The town or district meeting may vote separately on individual purposes of appropriation contained within any warrant article or budget, but such a separate vote shall not affect the governing body's legal authority to transfer appropriations, provided, however, that if the meet-

ing deletes a purpose, or reduces the amount appropriated for that purpose to zero or does not approve an appropriation contained in a separate article, that purpose or article shall be deemed one for which no appropriation is made, and no amount shall be transferred to or expended for such purpose, *unless such purpose is related to public safety.*

2005-0543s

AMENDED ANALYSIS

This bill allows a municipality to expend funds for public safety despite voter denial of a warrant article appropriation.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 176 ought to pass with amendment. Senate Bill 176 allows a municipality to expend funds for public safety despite voter denial of a warrant article appropriation provided the funds are appropriated from an alternative source. Put in simpler terms, that if the police chief of a town has a warrant article request for new safety equipment for his officers that is defeated, but then goes out and finds a grant to purchase the equipment, he can do so. Under the current law if a warrant article is defeated, then the item on the warrant article cannot be purchased under any circumstances. The Public and Municipal Affairs Committee unanimously recommends a vote of ought to pass with amendment for this bill and I hope we can all agree with the Public and Municipal Affairs Committee. I appreciate it.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to both the amendment and the underlying bill. I disagree with the idea that, after a public body, a municipal school board or a town meeting should vote no on a particular article, for instance a new patrol car. The idea that sometime after that vote, the police chief finds some other way to finance this police car, then he goes out and buys it. I have a real problem with that. The people said no. And no means no. If they vote down something in town meeting or on their SB 2 town on the warrant, they have spoken. They have said "we don't want that." Now it may be that under this very broad definition of public safety, I can see you know, some school board or municipal selectmen or town fathers deciding that that broad public safety exemption gives them the right to spend the money any way they want. And, that is not the way that we do things here in this state. If the people in the town or school district or other municipality, decide that they don't want something, I think that is what we have to go by. I don't think that we should put this in. So thank you.

SENATOR BARNES: Thank you, Mr. Chairman. Would you believe, Senator Boyce, that that very thing happened in Raymond, and you know what? The citizens in Raymond, the last election, voted out a selectman who they perceived as doing that. So would you believe that I believe that the folks in the towns have the control over the board of selectmen, the town fathers and mothers who they might be, can control that and have faith in them and that is what the selectmen in the town happened? Would you believe that there is a vote in the meeting that votes the police cruiser down and the very next day somebody runs into the darn thing and totals it? What are we going to do, put that police officer on a bicycle? How do you handle that?

SENATOR BOYCE: My problem with all of that is that yes, they can be voted out of office. Selectmen often have a two or three year term, I believe. And so yes, they can be voted out of office. However, the money has already been spent. The taxpayers have already been damaged by

this. They have already...the money has been spent on something the taxpayers said no. I just have to go along with no means no. Now, if you wanted to put into this something that said that there is some definition of emergency or definition or further definition of public safety, I could go along with something like. If you wanted to put in that this only applied to police cruisers that are damaged by accident or you know, only applied to something that was truly an emergency, I could understand that. But, to simply say that it is okay as long as it pertains to public safety, you can spend the money any way you want. No.

SENATOR BARNES: Thank you. Would you believe this sponsor of this bill is going to talk on this a little later and he has a perfect example of what happened in one of his communities?

SENATOR BOYCE: I understand there are always perfect examples of why we should do things that we otherwise ought not to do. But, I am saying that, under the language of this bill and this amendment, the definition of public safety is way too broad. And under that definition, it allows way too much latitude for the people's voice to be overruled. The people at that meeting have said no. We should not lightly brush it aside saying it is a public safety thing. That's like saying it is for the children. We always hate that. I am not in favor of saying that there is a blanket exception for public safety. If you can do this some other way and make it tighter, I might go along with it, but this language and the language in the bill, I disagree with because it is too broad. It gives too much latitude. There is no control over what's going to happen. I have seen selectmen try and get around something that was voted down in town meeting. I saw a school board just last year, they were told at the school board meeting, no we are not going to pay for that parking lot. There was a warrant article to pay for the paving of a parking lot. The end of the year they ended up with money in the budget. Guess what the school board did? They paid for that parking lot. Now, I could say that that parking lot was a public safety item because it was full of potholes and somebody's car was going to take a dip into that pothole and run over a kid. Now that is a public safety exception and, under that exception, they could pave that parking lot with the school funds and this would allow it. So no, I am not in favor of this amendment. I am not in favor of the underlying bill. If you can find some other way to say it that tightens it up to where it is a true emergency situation, I'd go along with that.

SENATOR BARNES: Would you believe that I am so happy that I asked you that question?

SENATOR FLANDERS: I rise in opposition in the sense that I can see things happening, and I believe, like Senator Boyce, that it needs to be tightened up. We could have a situation where a town police chief could go to the town and say I need a second cruiser and it gets voted down. So they go over to Wyman's Chevrolet and they make a deal and they get the cruiser. The town now is obligated for the maintenance, the costs, the insurance and all of that on that cruiser, and they say, oh we needed that second cruiser for safety. I don't like the way it is written. The situation is going to come up that they voted no on the police cruiser and then the police cruiser has been involved in an accident. Just because it was an article in the warrant that said no on the police cruiser, they would handle it exactly the same way that they would have to replace the cruiser because it is totaled. That has nothing to do with them not getting a new cruiser. All the town said was you can't replace that cruiser. Well now it is damaged. I don't think it is a good example. I think it is

too loose. I can see people getting second cruisers or getting seconds and the town's still going to have to pay for the maintenance of it. I would like to see it tightened up or defeated.

SENATOR EATON (In the Chair): And Wyman's Chevrolet thanks you for the advertisement.

SENATOR FLANDERS: We drive Fords unfortunately.

SENATOR KENNEY: I also would rise to oppose Senate Bill 176. I respect the vote of a community more than anything that you could imagine. When they say no, they mean no. Having been a former selectman, I've always known that the Municipal Budget Act has two line items that you can over expect. One is public welfare assistance and the other one is your emergency management line, which we always put in \$1. In regards to the public assistance, it really depends on how many people flow in and out of your community. But the only time we ever used that emergency management line item was during the ice storm. So we basically expended that line item and we were later reimbursed through FEMA with some of the monies that they reimbursed us through FEMA funds. I just believe that this gives a little bit too much broad parameters to purchase fire trucks, police cars when the voters in reality might have voted it down. I also think that, if there is an emergency in a community, that you can also go to a special session to identify something. Maybe something in that community from a catastrophic standpoint, has occurred, particularly in our larger cities and they can hold a special meeting in order to see if they need to appropriate those vehicles. But I think again, that we are overstepping our bounds with the voters. We need to respect their intent. Therefore, I would ask you to defeat Senate Bill 176. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I think that Senator Barnes hit the nail on the head. When we came here last session, the law was that no could have meant no and no could have meant yes. When we heard testimony two years ago in committee, the testimony was all on the school side. So when the police chief came to me, and he said, "I don't think you realize what you did to us". he was right. The car crashed in Pelham two weeks ago I believe. He is up against fixing it and he is up against this law. And basically what they said from a safety point of view was "we can't fix vehicles if the town said no on an issue." So all they are asking is to let us govern ourselves back at the board of selectmen. I personally believe that that's the way we meant to run this state. And what Senator Barnes said is perfectly logical. Whether you are in a two or three year term back home, the voters down there are going to judge you, or up there, for that matter, on what you do. So I think if you are using prudent judgment to fix a car and spend the taxpayers' money the right way, they are going to put you back. If you do it the wrong way, they are going to vote you out. But we are giving them no more authority than they had two years ago. Two years ago. Almost this whole body voted on this, but the whole talk was about the educational side. We never talked about the municipal side with the town. So I ask you to support this. I don't support an amendment to it because I don't believe you could make the category so small that it would work. I think they've asked for some leverage here, and I don't believe they've overstepped their bounds. Thank you.

SENATOR KENNEY: Senator Morse, in our county level, we lease out or at least we did, county sheriff-police vehicles. If there were an accident to occur, like with any automobile accident, the insurance company

looks at the situation and they try to come up with whatever the value of the vehicle is, as far as the damage that has occurred, and send you the check right out, to go ahead with that repair. Couldn't your community have gone and leased a vehicle in the interim while it got its insurance money to replace that vehicle?

SENATOR MORSE: Senator, that is exactly why I am saying it is a local issue. Whether they could or couldn't, it is their issue. That is why I am saying send it back to them. They negotiate. They decide to be self-insured or not be self-insured. They decide to lease or not lease and they can decide to rent. That is their job as selectmen, to live within their bounds.

SENATOR GOTTESMAN: Thank you, Mr. President. I just rise to speak to this issue of everything being focused on an automobile. I think that we are all in a place in life where we have to understand that tragedy can happen on a moment's notice. We have seen some horrible tragedy in the past year. We can't anticipate every single thing that a town is going to have to spend their money on and there may become a need to come up with something that is the state of the art at the time that this event occurs. So I would err on the side of giving the town fathers the ability to take a look at what their needs are when those needs arise. Thank you.

The question is on the adoption of the committee amendment.

A division vote was requested.

Yeas: 18 - Nays: 5

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 188, relative to allowing the construction of seasonal dwellings on certain properties without street frontage. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

Public and Municipal Affairs

February 28, 2005

2005-0483s

06/03

Amendment to SB 188

Amend the title of the bill by replacing it with the following:

AN ACT relative to the construction of buildings on properties without street frontage.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Erection of Buildings on Streets; Exemptions. Amend RSA 674:41 by inserting after paragraph II-a the following new paragraph:

II-b. A town or city, by action of its local legislative body, may vote to exempt from the provisions of this section any specified category of structures. Unoccupied structures used in conjunction with a recreational, agricultural, or forestry-related business shall be exempt from the requirements of this section unless the local legislative body has passed a regulation that requires such structures to be built on lots that

conform to paragraph I. Prior to beginning construction of a structure in an exempted category on a lot whose only frontage is on a class VI or a private road, the owner or the owner's designee shall produce evidence to the local governing body or building inspector that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot on which the structure will be located.

2 Erection of Buildings on Streets; Rights of Way. Amend RSA 674:41, III to read as follows:

III. ~~[This section shall supersede any less stringent local ordinance, code or regulation, and no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section.]~~ For purposes of paragraph I, "the street giving access to the lot" means a street or way abutting the lot and upon which the lot has frontage. It does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), ~~[or]~~ (c), *(d)*, *or* *(e)*.

3 Effective Date. This act shall take effect 60 days after its passage.

2005-0483s

AMENDED ANALYSIS

This bill allows towns to exempt certain structures from the requirement that they be built on streets as long as the owner or owner's designee has filed a limitation on municipal liability in the registry of deeds. This bill also exempts unoccupied recreational, agricultural, or forestry-related structures from the street access requirement unless specifically included by local regulation.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 188 ought to pass as amended. Senate Bill 188 allows towns to exempt certain structures from the requirement that they be built on streets as long as the owner or owner's designee has filed a limitation on municipal liability in the registry of deeds. This bill also exempts unoccupied recreation, agricultural, or forestry-related structures from the street requirement unless specifically included by local regulation. Essentially, this will allow dwellings such as sugar houses and warming huts to be built on land that does not have access to street frontage. The Public and Municipal Affairs Committee unanimously recommends a ought to pass for this bill.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

SB 198-FN, relative to regulating home contractors. Public and Municipal Affairs Committee. Ought to pass, Vote 4-1. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. I rise to move ought to pass on Senate Bill 198-FN. I would like to begin my comments by saying I congratulate Senator Martel for starting the voter pattern that gave us this wonderful 4-1 vote in committee. Senate Bill 198 will help

us to begin to protect the public from unscrupulous contractors who prey on the public's trust. We heard compelling testimony in our hearing of people doing everything right in selecting a contractor, people who called references, went and looked at potential contractors' craftsmanship before selecting them, and yet they were taken advantage of. We even heard a case where a New Hampshire resident was taken advantage of, but it was only after the state of Vermont stepped in that they were able to be compensated. We need to make sure we can take care of our own citizens; this bill will help us towards that goal. The Public and Municipal Affairs Committee recommends a vote of ought to pass for the bill. Thank you, Mr. President. May I yield to Senator D'Allesandro who may have other comments?

SENATOR D'ALLESANDRO: Thank you, Mr. President. My apologies for being late. I got tied up in traffic. Now Senator Flanders, I want you to stay there and if I have a problem with my submaxillary glands, I apologize for that. It is the sublingual glands that are the real ones. Let me speak to this bill in light of the fact that I was asked by a number of home owners to sponsor this piece of legislation. When I got the call last year from the Attorney General's Office and was asked to sponsor this bill, it was over the number of complaints that are being filed with the Attorney General's Office, the Office of Consumer Affairs against contractors. For the record, I went over and I checked the numbers. There were 3,098 claims filed last year and 313 were against contractors. When we talk about a contractor we say a builder, a painter, a roofer or a home improvement. Those are the four categories. From January 1, '05 until today, 47 complaints against contractors have been filed out of the total of 552. Now I don't want to over-legislate, 'cause I don't think our job is to legislate an answer to every problem. But what I do want to say is when I got the list of people who had been fleeced out of money, and that list was exhaustive to be honest with you. Leo Callahan helped put that list together going around and taking calls from people who had a problem. Now, in the old days, we all knew who our contractors were. We created an arrangement with them and they delivered for us. I had an addition put on my home. Ed Jewett did it from Raymond, Senator Barnes. Jewett Construction. Ed, terrific, terrific guy. There wasn't any problem. I had my kitchen done by someone and there was no problem. I knew the contractor, a very legitimate dealer and everything worked out. What is happening today is people are making arrangements with contractors and the contractors are leaving without doing the work. Senator Larsen just told me, gave me a situation where an architect in Concord put up a \$50,000 amount of money for a person to do some work and that person disappeared and the work never got done. Well shame on that architect obviously. But, as a result of that, I think we have an obligation to do something to help people. In most situations people are looking to get the best price and I understand that, and they shop around looking for the best price. But they perceive that contractors are licensed by the state and they have some legitimacy. Now I did get a call from a contractor in Manchester. Actually it is in Bedford, Sheila, you know him. It's the person who does the Lenox Furnaces. Mr. LeBlanc. He is a wonderful guy. My wife happened to work for him as a secretary. He said that every contractor should have insurance and they should provide proof of working men's compensation because this again would provide legitimacy. So that is the intent of the legislation. It is not to over-regulate, but it's to give some legitimacy to a business that is very worthwhile worthy business. Now there is a fiscal note attached to this and the fis-

cal note is extraneous and it is not correct. We can do this without any fiscal appropriation because we do have a number of boards that are governed. Louisa Lou came over and spoke to the committee about it. We have an amendment that takes care of that, that takes care of the fiscal nature of the bill. Now I know that many of you have received calls from contractors about this bill. Many of them say that we don't need it and so forth and so on. Well, it is my opinion, after looking at all of the problems that have been created, that we need something and this is a start in terms of moving in that direction. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I want to thank Senator Burling and Senator D'Allesandro for bringing this bill out for me. I appreciate that very much. I ask you to find this bill inexpedient to legislate. The industry has contacted us as well as private individuals and private contractors have called to explain to me that they would like to see this bill inexpedient to legislate for the simple reason that this bill is not the right bill. There is a bill, a sister bill in the House, which is much more clear and precise as to what and how the industry regulates itself as well as how it is regulated in the rules and regulations of the state. So, the reason why I seem to be doing a little bit of a turmoil bringing it out of the committee and voting in committee in favor and getting that ITL motion, is simply for the fact of getting something that is better. I urge my fellow Senators to please keep that in mind when we vote on this bill. ITL overturn the committee report of ought to pass and ITL this bill so that we can move on and bring the House version over so we can vote on that, adjust it the way that we want and move from there. So thank you very much, Mr. President.

SENATOR BARNES: Thank you, Mr. President. You noticed the 4-1 vote. I happen to be the person in that committee that voted against this bill. I try to stay consistent when I'm up here, and last year when this same piece of legislation came through, I voted the same way. I heard the same things that my colleagues heard and there were some very sad stories. A lady from Concord had a very sad story. No question about it. I also want to say that I didn't hear from any lobbyist or any contractors before my vote on this bill. I got a couple of "attaboys" after the vote, but nothing before the vote. Now I believe, and the reason I voted against this, that anyone that is having repair work, spending a sum of money on their home or whatever, should find out where this bird that is doing the work did their last two or three jobs. There is an old saying, "Let the buyer beware." For gosh sakes, we cannot legislate everything in this state of New Hampshire in this chamber and I don't think we are here to do that. I think that we over-legislate many times. I think this is a typical example of over legislating. Thank you, Mr. President.

Senator Burling offered a floor amendment.

Sen. Larsen, Dist 15

Sen. Burling, Dist 5

Sen. D'Allesandro, Dist 20

Sen. Martel, Dist 18

Sen. Roberge, Dist 9

March 9, 2005

2005-0558s

08/10

Floor Amendment to SB 198-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Subparagraph; Consumer Protection and Antitrust Bureau; Duties. Amend RSA 21-M:9, II by inserting after subparagraph (u) the following new subparagraph:

(v) Enforcing the provisions of RSA 310-A:140 - 163, relative to home contractors.

2 Chapter Heading Change. Amend the chapter heading of RSA 310-A to read as follows:

PROFESSIONAL ENGINEERS, ARCHITECTS, LAND SURVEYORS,
PROFESSIONAL GEOLOGISTS, **HOME CONTRACTORS**, AND
NATURAL SCIENTISTS

3 Joint Board; Member Added. Amend RSA 310-A:1 to read as follows:

310-A:1 Joint Board Established. There shall be a joint board of professional engineers, architects, land surveyors, foresters, professional geologists, **home contractors**, and natural scientists, consisting of each of the members of the board of professional engineers, board of architects, state board of licensure for land surveyors, foresters' board, board of professional geologists, **board of home contractors**, and the board of natural scientists. The joint board shall meet at least quarterly to carry out its duties established under this chapter.

4 New Subdivision; Home Contractors. Amend RSA 310-A by inserting after section 139 the following new subdivision:

Home Contractors

310-A:140 Definitions. In this subdivision:

I. "Actual loss" means the amounts payable for the cost of repair, replacement, completion, or performance under the terms of a residential contracting agreement with respect to which a claim is made.

II. "Apprentice" means any person who is engaged in learning and assisting in home construction or home improvement under an apprenticeship program acceptable to the board.

III. "Board" means the state board of registration for home contractors, established by RSA 310-A:141.

IV. "Claimant" means an owner and resident of a residential building, containing at least one but not more than 4 dwelling units, who has entered into a construction contract with a contractor to carry out construction work on such building, and who is making a claim against the contractor for failure of performance under the contract.

V. "Contract" means an agreement, written or oral, for the performance of certain residential contracting work, including all labor, goods, and services set forth under such agreement.

VI. "Employee" means any person employed by and under the direction and control of a contractor or subcontractor and who performs services for wages or salary.

VII. "Home contractor" means any person who owns or operates a contracting business who, personally or through others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for residential contracting work.

VIII. "Owner" means any homeowner of a pre-existing building containing at least one but not more than 4 dwelling units, or a tenant thereof, who orders, contracts for, or purchases the services of a home contractor or subcontractor, and such owner's primary business is not rental of tenant housing.

IX. "Person" means any individual, partnership, corporation, association, or other organization.

X. "Registrant" means any contractor or subcontractor duly registered under the provisions of this subdivision.

XI. "Residential contracting" means the construction, reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition, or construction of an addition to any building containing at least one but not more than 4 dwelling units, which building or portion thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building.

XII. "Salesperson" means any person other than a supplier of material or a laborer, who solicits, offers, negotiates, executes, or otherwise endeavors to procure by any means whatsoever, directly or indirectly, a contract for residential contracting services from an owner on behalf of a contractor or subcontractor.

XIII. "Subcontractor" means any person other than a supplier of material or labor, who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than as a subcontractor.

XIV. "Tenant" means a person who has entered into a lease or other contractual arrangement with the owner.

310-A:141 Board Established.

I. There shall be a state board of registration for home contractors consisting of 5 members: 2 contractors, one subcontractor, and 2 public members. Each member shall be appointed by the governor, with the approval of the council, to a term of 5 years. No member of the board shall be appointed to more than 2 consecutive terms.

II. Any public member of the board shall be a person who is not, and never was, a contractor, subcontractor, or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of residential contracting services or an activity directly related to residential contracting, including the representation of the board or trade for a fee at any time during the 5 years preceding appointment.

310-A:142 Compensation and Expenses. Members of the board shall serve without compensation, but shall be reimbursed for all actual traveling, incidentals, and clerical expenses necessarily incurred in carrying out the provisions of this subdivision.

310-A:143 Organization and Meetings. The board shall hold at least 4 regular meetings each year, and special meetings may be held at such times as the business of the board may require. Notice of all meetings shall be given in such manner as the rules of the board may provide. The board shall annually elect a chairperson and a vice-chairperson from among its members. A quorum of the board shall consist of not less than 3 members, at least one of whom shall be a public member.

310-A:144 Rulemaking Authority. The board shall adopt rules, pursuant to RSA 541-A, relative to:

I. The design and content of all forms and applications required under this subdivision.

II. The application procedure to register under this subdivision.

III. The qualifications of registration applicants in addition to those requirements established under this subdivision.

IV. Registration approval, denial, renewal, suspension, or revocation.

V. Ethical and professional standards required to be met by each registrant under this subdivision, and how disciplinary actions by the board shall be implemented for violations of these standards.

VI. Fees authorized under this subdivision.

VII. Procedures for the conduct of hearings consistent with the requirements of due process.

310-A:145 Fees. The board shall establish fees for registration of applicants and for renewal of registration to provide services under this subdivision, and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year.

310-A:146 Receipts and Disbursements. The secretary of the board shall receive and account at least monthly for all moneys derived under the provisions of this subdivision, and shall pay the same to the state treasurer. The board may employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures for any purpose which, in the opinion of the board, is reasonably necessary for the proper performance of its duties under this subdivision. Under no circumstances shall the total amount of payments made exceed the amount of fees collected.

310-A:147 Registration of Contractors Required; Registration by Corporation or Partnership.

I. The board shall register and regulate home contractors and subcontractors. When issued, a registration shall be valid throughout the state, and the registrant shall be entitled to perform the work of a home contractor or subcontractor, as the case may be, anywhere within the state without any payment or additional fee. Each applicant for registration shall present to the secretary of the board on a form furnished by the board a written application for registration, containing such information as the board may require, accompanied by the required fee.

II. No contractor or subcontractor shall undertake, offer to undertake, or agree to perform residential contracting services unless registered therefor with the approval of the board.

III. It shall be the duty of the board to issue and deliver a certificate of registration to all applicants who have been approved for registration.

IV. In the case of registration by a corporation or partnership, an individual shall be designated to be responsible for the corporation's or partnership's work. The corporation or partnership and its designee shall be jointly and severally liable for the payment of the registration fee and for violations of any provisions of this subdivision, including actions by the registrant's employees, subcontractors, or salespersons.

310-A:148 Application for Registration; Required Information. In order to be registered as a contractor or subcontractor, an applicant shall make a written application under oath to the board on a form provided by the board. Said application shall set forth information that includes, but shall not be limited to:

I. The applicant's name, home address, and business address exclusive of post office box addresses.

II. The names and addresses of all owners, partners or trustees of an applicant including, in case of corporate entities, the names and addresses of all officers, directors and principal shareholders, and evidence of registration with the secretary of state under RSA 293-A, 305-A, or 349, as appropriate. If such corporate information is accurately reflected

in the articles of organization or amendments thereto, or a current annual report of condition or other documents on file with the secretary of state or the Securities and Exchange Commission, a copy of the relevant sections of such filing shall satisfy the application requirements specified in this paragraph.

III. Whether the applicant has ever been previously registered in the state as a contractor or subcontractor pursuant to this subdivision, under what other names he or she was previously registered, whether there have been previous judgments or arbitration awards against him or her, and whether the registration has ever been suspended or revoked.

310-A:149 Registration Applications to be Public Records; Display of Registration Number by Contractors.

I. The board shall keep on file, in convenient form and open to public inspection, all applications for registration and copies of registrations issued and the names of all contractors or subcontractors whose registration has been revoked, suspended, or surrendered.

II. Every written contract, building permit, and advertisement shall display the contractor's or subcontractor's certificate of registration number.

310-A:150 Changes of Name or Address; Procedure Upon Expiration of Certificate; Replacement Certificates.

I. Every registered contractor or subcontractor shall notify the board within 30 days of any change of trade name or address.

II. Upon the expiration, termination, or voluntary surrender of a registration, the registrant shall deliver the registration to the board which shall cancel the registration and endorse the date of expiration, termination, or surrender.

III. If a certificate of registration is lost, misplaced, or destroyed, the registrant shall file an affidavit to that effect and the board, for a nominal fee, shall issue a replacement registration, clearly identified as such, both on the certificate of registration and in the records of the board.

310-A:151 Expiration and Renewal of Registration. Regardless of any outstanding registration to the contrary, all registrations issued by the board shall expire on the last day of the month of the registrant's birth, but may be renewed during the following month, retroactive to the first day of the month. The fee for renewal of all registrations issued under this subdivision shall be established by the board. Upon failure to pay the renewal fee within the required period, a registrant may renew the registration by submitting the required fee plus \$10 before the last day of the second month following the month of the registrant's birth. Any application received thereafter shall be rejected, unless accompanied by a new written application pursuant to RSA 310-A:147 and RSA 310-A:148.

310-A:152 Grounds for Denying Registration or Renewal; Reconsideration. No application for registration or renewal conforming to the requirements of this subdivision may be denied except for a finding by the board that the applicant has done one or more of the following acts which are grounds for denial:

I. Made material omissions or misrepresentations of fact on application for registration or renewal under this subdivision.

II. Failed to pay the registration fee required by this subdivision.

III. Failed consistently to perform contracts or has performed the contracts in an unprofessional manner, or has failed to complete the contracts with no good cause, or has engaged in fraud or bad faith with respect to the contracts.

IV. Failed to meet or has violated any of the requirements for a registered contractor or subcontractor set forth in this subdivision or has performed or is attempting to perform any act prohibited by this subdivision.

V. Has engaged in an unfair or deceptive act or practice in violation of RSA 358-A. If a registration is refused, the applicant may, within 10 days from the date notice of refusal is mailed, make a request for reconsideration. The board shall render its decision within a reasonable period of time, but not more than 60 days following the request.

310-A:153 Suspension or Revocation of Registration; Grounds. Prior to its expiration date, a certificate of registration may be suspended or revoked by the board in accordance with the procedures and on the grounds set forth in section RSA 310-A:152, or may be terminated by voluntary surrender by the registrant. Further grounds for suspension or revocation include any violation by a registrant or any agent or employee of the registrant of any of the provisions of this subdivision.

310-A:154 Prohibited Acts by Contractors and Subcontractors.

I. The following acts are prohibited by contractors or subcontractors:

(a) Operating without a certificate of registration issued by the board.

(b) Abandoning or failing to perform, without justification, any contract or project engaged in or undertaken by a registered contractor or subcontractor, or deviating from or disregarding plans or specifications in any material respect without the consent of the owner.

(c) Failing to credit to the owner any payment the owner has made to the contractor or the contractor's salesperson in connection with a residential contracting transaction.

(d) Making any material misrepresentation in the procurement of a contract or making any false promise of a character likely to influence, persuade, or induce the procurement of a contract.

(e) Contracting beyond the scope of the registration as a contractor or subcontractor.

(f) Acting directly, regardless of the receipt or the expectation of receipt of compensation or gain from the mortgage lender, in connection with a residential contracting transaction by preparing, offering or negotiating or attempting to or agreeing to prepare, arrange, offer, or negotiate a mortgage loan on behalf of a mortgage lender.

(g) Acting as a mortgage broker or agent for any mortgage lender.

(h) Publishing, directly or indirectly, any advertisement relating to home contracting which does not contain the contractor's or subcontractor's certificate of registration number or which does contain an assertion, representation, or statement of fact which is false, deceptive, or misleading.

(i) Advertising in any manner that a registrant is registered under this subdivision unless the advertisement includes an accurate reference to the contractor's or subcontractor's certificate of registration.

(j) Violating the building laws of the state or of any its political subdivisions.

(k) Misrepresenting a material fact by an applicant in obtaining a certificate of registration.

(l) Failing to notify the board of any change of trade name or address as required by RSA 310-A:150, I.

(m) Conducting a residential contracting business in any name other than the one in which the contractor or subcontractor is registered.

(n) Failing to pay for materials or services rendered in connection with operating as a contractor or subcontractor where sufficient funds are received as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased.

(o) Failing to comply with any order, demand, or requirement lawfully made by the board or attorney general under and within the authority of this subdivision.

(p) Demanding or receiving payment in violation of RSA 310-A:157, I(f).

(q) Violating any other provision of this subdivision.

II. Violations of this section may subject the violator to the administrative sanctions of RSA 310-A:158 and to the penalties described in RSA 310-A:160.

III. Violations of any of the provisions of this subdivision shall constitute an unfair or deceptive act or practice within the meaning of RSA 358-A:2.

310-A:155 Persons Exempt From Registration Requirement. The following persons are not required to be registered under this subdivision:

I. The state or any of its political subdivisions.

II. Any school, public or private, offering as part of a vocational education program courses and training in any aspects of home contracting.

III. Electricians, plumbers, architects or any other persons who are required by New Hampshire law to attain standards of competency or experience as a prerequisite to licensure for and engaging in such profession and who are acting exclusively within the scope of the profession for which they are currently licensed pursuant to such other law, construction supervisors excepted.

IV. Persons dealing in the sale of goods or materials who neither arrange to perform nor perform directly or indirectly any work or labor in connection with the installation of or application of the goods or materials.

V. Persons building their own homes or personally doing the renovations, and any individual who performs labor or services for a contractor or subcontractor, for wages or salary, and who does not act in the capacity of a contractor.

VI. Any contractor or subcontractor who works on one undertaking or project by one or more contracts where the aggregate contract price is less than \$500, provided, however, that the contract is not in an amount of less than \$500 for the purpose of evading this subdivision.

VII. Any person who engages in the business of a contractor or subcontractor on other than a full-time basis, and who has earned in gross revenues, as a contractor or subcontractor, less than \$5,000 in the previous 12-month period.

VIII. Any person acting as a contractor or subcontractor who was enrolled as a full-time student in a secondary school or college with degree granting authority from the government of the state in which the school is located for the immediately preceding academic semester, and is also enrolled as a full-time student for the next academic semester in the same or a similar degree granting secondary school or college, provided that at least 2/3 of the number of the employees of the contractor or subcontractor are similarly enrolled in secondary schools or colleges and that the contractor or subcontractor does not reasonably expect to earn or does not in fact earn, in gross revenues, more than \$5,000.

IX. Persons who install central heating, air-conditioning systems, energy-conservation devices, or provide conservation services conducted by or on behalf of a public utility.

310-A:156 Inspectors.

I. The board shall have the authority to appoint such inspectors as are necessary to ensure compliance with home construction and home improvement practices consistent with the public safety and welfare.

II. Upon written request of the board, a building inspector appointed by a local municipality pursuant to RSA 673:1, III, shall have the authority to perform inspections as an agent of the board to ensure compliance with home construction and home improvement practices consistent with this subdivision.

III. An inspector appointed under this section shall have the authority to enter any premises, with the owner's consent, in which a home construction project subject to regulation under this subdivision is being conducted for the purpose of making such inspection as is necessary to carry out the inspector's duties under this section. If the residence to be inspected is occupied by a tenant, the owner shall give notice to the tenant as required under the terms of the owner's lease before granting consent for an inspection under this section.

310-A:157 Residential Contracting Agreements; Owner to be Given Copy of Agreement; Alternative Dispute Resolution Clauses Permitted.

I. Every agreement to perform residential contracting services in an amount in excess of \$1,000 shall be in writing and shall include the following documents and information:

(a) The complete agreement between the owner and the contractor and a clear description of any other documents which are or shall be incorporated into the agreement.

(b) The full names, dates of birth, physical addresses, and registration numbers of the contractor and any subcontractor or subcontractors, the name of the salesperson, if any, who solicited or negotiated the contract, and the date when the contract was executed by the parties.

(c) The anticipated date on which the work under the contract is scheduled to begin and the anticipated date on which the work is scheduled to be substantially completed.

(d) A detailed description of the work to be done and the materials to be used in the performance of the contract.

(e) The total amount agreed to be paid for the work to be performed under the contract.

(f) A time schedule of payments to be made under the contract and the amount of each payment stated in dollars, including all finance charges. Any deposit required under the contract to be paid in advance of the commencement of work under the contract shall not exceed the greater of 1/3 of the total contract price or the total of the actual cost of any materials or equipment of a special order or custom-made nature, which must be ordered in advance of the commencement of work, in order to assure that the project will proceed on schedule. No final payment shall be demanded until the contract is completed to the satisfaction of the parties.

(g) The signatures of all parties shall be affixed to the contract.

(h) There shall be a clear and conspicuous notice appearing in the contract:

(1) That all contractors and subcontractors must be registered by the board and that any inquiries about a contractor or subcontractor relating to a registration should be directed to the board.

(2) Of the registration number of the contractor or subcontractor.

(3) Of an owner's 3 day cancellation rights.

(4) Of all warranties and the owner's rights under the provisions of this subdivision.

(5) In 10 point bold type or larger, directly above the space provided for the signature, "Do not sign this contract if there are any blank spaces."

(6) Of any lien on or security interest on the residence as a consequence of the contract.

(i) An enumeration of such other matters upon which the owner and the contractor may lawfully agree, provided, however, that no such agreement may waive any rights conveyed to the owner under the provisions of this subdivision.

(j) Any other provision otherwise required by the applicable laws of the state.

II. No contract shall contain an acceleration clause under which any part or all of the balance not yet due may be declared due and payable because the holder deems himself or herself to be insecure. However, where the contractor deems himself or herself to be insecure he or she may require as a prerequisite to continuing the work that the balance of funds due under the contract, which are in the possession of the owner, shall be placed in a joint escrow account requiring the signature of the contractor and the owner for withdrawal.

III. At the time of signing, the owner shall be furnished with a copy of the contract signed by both the contractor and the owner. No work shall begin prior to the signing of the contract and transmittal to the owner of a copy of such contract.

IV. Any contract entered into between a contractor and owner shall require the contractor to inform the owner of all necessary permits.

V. Any contract entered into between a contractor and owner may provide that the contractor may initiate alternative dispute resolution through any private arbitration services approved by the board, under paragraphs I-V, inclusive, provided that the alternative dispute resolution provision is clearly and conspicuously disclosed in the contract, in language designated by the board, and that each party separately signs and dates the provision, thereby assenting to the procedure. Any contract that includes an arbitration provision shall also authorize the owner to opt out of the arbitration provision and to seek a remedy in a court of competent jurisdiction.

VI. Contracts which fail to comply with the requirements of this section shall not be invalid solely because of noncompliance.

310-A:158 Enforcement; Court Action; Arbitration.

I. Any party may bring an action to enforce any provision of this subdivision, or to seek damages subject to the provisions of this subdivision, in the superior court, the district court, or the small claims court, subject to each court's jurisdictional requirements.

II. In the alternative, any party may request that a dispute resulting from and relating to residential contracting be decided under the terms of a private arbitration program approved by the board.

310-A:159 Private Arbitration Services Program; Two-Year Limitations Period; Appeals.

I. There shall be a private arbitration services program approved by the board, to consider disputes between owners and registered contractors and subcontractors, concerning or arising from contracts for residential contracting services. No claim may be filed for arbitration after 2 years from the date of the contract. Such arbitration shall be performed by private arbitration services approved by the board, and shall operate in accordance with the rules adopted by the board. Either party may elect to pursue an action in small claims court if the amount of the dispute is within small claims court jurisdiction.

II. All registered contractors and subcontractors who enter into contracts for residential contracting impliedly consent to the provisions contained in this section.

III. A contractor or subcontractor who is required to submit to arbitration as a result of an owner's application for arbitration may file a counterclaim, based on or arising from the same contract, in that arbitration.

IV. All findings of fact issuing from arbitration shall be taken as prima facie evidence in any subsequent appeal brought by either party arising from the matter considered in the arbitration.

V. A contractor, subcontractor, or owner may also appeal the decision of an arbitrator for a trial in a New Hampshire court of competent jurisdiction and venue. Such appeal shall be filed within 21 days from the issuance of such findings and shall stay any work or payment to the owner, contractor, or subcontractor.

310-A:160 Penalties for Violation.

I. If the board determines that any registrant is liable for a violation of any of the provisions of this subdivision, the board may suspend the registrant's certificate of registration for such period of time as shall be determined by the board, revoke the registrant's certificate of registration, or reprimand the registrant.

II. The board may assess an administrative penalty not to exceed \$2,000, payable within 30 days of its order, for each violation of any provision of this subdivision committed by contractors or subcontractors who are registered or who are required to be registered under this subdivision.

III. In determining whether to impose an administrative penalty, the board shall consider the seriousness of the violation, the deleterious effect of the violation on the complainant, any good faith on the part of the contractor or subcontractor, and the contractor's or subcontractor's history of previous violations.

310-A:161 Penalty for Knowing Failure to Register or Other Willful Violation.

I. Any contractor or subcontractor who knowingly operates without obtaining a certificate of registration as required by this subdivision and who is not otherwise exempt from the registration requirement or any contractor or subcontractor who continues to operate after revocation of or during suspension of, or who fails to renew his certificate of registration, shall be guilty of a misdemeanor.

II. Any person who knowingly violates any of the provisions of this subdivision, with respect to which a greater penalty is not otherwise provided by the provisions of this subdivision or by any other law shall be guilty of a misdemeanor.

III. Such penalties shall be in addition to any administrative penalty otherwise applicable thereto and may be sought in an action brought by the attorney general pursuant to RSA 21-M:9, II(u) and RSA 358-A.

310-A:162 Actions the Board May Take to Prevent Harm to Citizens.

I. If the board concludes that the continuing conduct of any person alleged to be in violation of this subdivision may result in substantial or irreparable harm to any citizen of the state, it may seek:

(a) A permanent or temporary injunction with respect to the conduct from the superior court of any county in which the alleged violation is occurring, or in which the violator has its principal place of business; or

(b) Restitution or an order requiring satisfactory completion of the contractor's contract.

II. The board shall not be required to file a bond or to show a lack of an adequate remedy at law when seeking an injunction under this section against any person, association, partnership, or corporation not registered under this subdivision.

310-A:163 Subdivision Not to Lessen Individual Responsibility. This subdivision shall not be construed to relieve or lessen the responsibility of any person registered under this subdivision, nor shall the state be deemed to have assumed any such liability by reason of the issuance of registration.

5 Initial Appointments.

I. The initial appointments to the board of registration for home contractors under RSA 310-A:141 as inserted by section 4 of this act shall be staggered as follows:

- (a) One contractor, a one-year term.
- (b) The subcontractor, a 2-year term.
- (c) One public member, a 3-year term.
- (d) One contractor, a 4-year term.
- (e) One public member, a 5-year term.

II. Except for the appointments made under subparagraphs I(d) and (e), appointments under paragraph I shall not be construed as a term for the purposes of the 2-consecutive-term restriction under RSA 310-A:141, I.

6 Effective Date. This act shall take effect January 1, 2006.

2005-0558s

AMENDED ANALYSIS

This bill establishes a board for the registration and regulation of home contractors to be placed under the joint board for professional engineers, architects, land surveyors, professional geologists and natural scientists. The attorney general has enforcement authority.

SENATOR BURLING: May I speak to this while we're passing it out? In the brief period of time in which we had a majority in committee that was in favor of this bill, this floor amendment represented the consensus of the four of us and the important distinction is, this floor amendment puts jurisdiction over licensure and regulation into the so-called joint committee. The joint committee is an existing committee so-called under statute, which currently regulates architects and engineers. If this concept were to pass, it would be very properly included in the mix of architects, engineers and home contractors. That is what this floor amendment does. As I say, at the time in committee, we forgot to do it. I did it as a follow up and, at the time I did it, I believed I had the consensus of all of those who had spoken in favor of this concept. If there be any member of the Senate who doesn't want to be shown as sponsoring or enjoying this amendment, my apologies. Perhaps events went by us rather fast. I would like to say there was an extraordinary amount of very impressive testimony and the testimony did not come from people who had been negligent in the conduct of their own affairs. What moved me the most was the testimony from people who said, "Listen I understand buyer beware. I went out and got three recommendations. I went and talked to two of them. I did what I could by contacting the Better Business Bureau and asking what they knew about this contractor. And I still wound up putting \$17,000 into a job that never got down." We can vote this up or down, but we ought to at least be honest with each other about the consequences. If we vote this down, we need to understand that the New Hampshire Department of Justice doesn't have enough money in

its budget to provide the consumer protection that people need to combat this wrong. We need to understand that it is much too easy to move back and forth across the borders of this state to do a lousy job in West Lebanon and then scoot over to Hartland, Vermont. I am not saying that Hartland, Vermont isn't a wonderful place, it is, I look at it regularly. But there was evidence of people who moved back and forth across the borders. Thank goodness that Vermont, in one case, was able to capture and prosecute a person who had done some awful work in Lebanon and Hanover. It's a real problem. If we wait for another bill, then please let's make the commitment to do a major effort. Our neighbors and friends need us to stand up for them. There is a problem that needs to be fixed. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator Burling, I have respected you from days over in the House and I respect you here in the Senate.

SENATOR BURLING: It is reciprocal, Senator.

SENATOR BARNES: I appreciate that. Having said that...

SENATOR BURLING: Oh-oh.

SENATOR BARNES: No, this is serious business. This is serious to you and the folks that signed this. I am sitting here with a fiscal note and a 13 page amendment that is dropped on my desk asking me to vote on it, and I look at the date, Senator Burling, and it said March 9th. Now maybe it caught in the same traffic jam that Senator D'Allesandro got caught in at lunch time, but I think the Senate should have had this in our hands so we could have read 13 pages, that I am sure are very important. I don't think we can grasp it. If this were not an FN bill, I'd ask to table it out of respect for you so we could look at this and talk about it next week. But obviously we can't do that. Would you believe?

SENATOR BURLING: I do believe and I too am frustrated occasionally by the press of business and how hard this is. The request was put in. Unfortunately, I understand... There has been discussion about this. As I say, among the majority as it then existed on the committee, this was our intention. You were in the room when we discussed doing this.

SENATOR BARNES: That is correct.

SENATOR BURLING: Everything in this amendment is identical to the version that is in the calendar except for the reference to the joint committee. That is the only change in this amendment.

SENATOR BARNES: Is this 13 page amendment in my calendar that I received this morning?

SENATOR BURLING: No.

SENATOR BARNES: So, this is the first chance that myself and the rest of my colleagues outside of the folks that are on this piece of legislation or on this amendment... what have we got here, one, two, three, four, five. Senator Martel, Senator Larsen, Senator Burling, Senator D'Allesandro, Senator Roberge have had a chance to sit home or sit in their offices and go through this 13 pages. They can understand this very well. But the rest of us, I don't think we all understand this and I think out of respect for the Senators that haven't seen this, I think we should have an opportunity to look at it. To do this at the last minute with the fiscal note, I don't think that is right Senator. Would you believe?

SENATOR BURLING: Mr. President, I stand justifiably chastised, but this was a concept that we discussed in committee when we did this. I am sorry to those of you who didn't get it as quickly as possible. But it is kind of a scramble to get floor amendments done around here. I will do better next time.

SENATOR MARTEL: Senator Burling, I just want to make sure that I thank Senator Burling for his indirect apology or my name being put on the amendment without us agreeing that my name should be on the amendment. I thank him for that. But there was, yes, we did have some discussion on that and would you believe, that there was no consensus on the amendment? But, he did propose it in wording while we were in the committee. I now urge that we vote down the amendment. Thank you.

SENATOR BARNES: Senator Martel, did you just say that your name is on this amendment, but you are going to vote against it because you haven't had a chance to read it?

SENATOR MARTEL: Yes, Senator, I did not say that I would like to have my name on this amendment first of all, and Senator Burling knows that. He just apologized for that on the floor, as well as I never saw this. I don't want to embarrass the Senator.

SENATOR BARNES: No, no.

SENATOR MARTEL: I am just saying I accept that. But the other thing is that I haven't seen this either.

SENATOR BARNES: Thank you, Senator.

SENATOR LARSEN: Senator Burling, I understood, and my attempts to go through this floor amendment make it look as though I am right in understanding that your floor amendment is a reproduction of Senate Bill 198 except in the first 15 lines where you added the joint board language. Is that correct?

SENATOR BURLING: That is correct, Senator.

SENATOR LARSEN: So the idea that we haven't seen this bill is incorrect. We have. It is Senate Bill 198. And the only question of the floor amendment is do we think that, if such a board...if such a regulation were to be included, that the group that should regulate home contractors would be "the joint board that oversees engineers, land surveyors, foresters, geologists, and natural scientists." So, am I correct in understanding that the real change is just the first 7-15 lines?

SENATOR BURLING: Senator, that is absolutely correct. In my 14 years in the Legislature, there have been many times when I frankly haven't understood the drafting requirements that require something be done all over again. In committee, we talked about creating this subject to the joint board. It was agreed that that's what we wanted to do. When we had the 4-1 vote taken, we forgot to put it under the jurisdiction of the joint board. I went to each of the Senators who had voted in favor of the passage of the original amendment, said I was interested in doing this floor amendment and wasn't it what we wanted to do. I believed, with my exception, which I have given three apologies now, to my friend Senator Martel. The purpose was to accomplish what we intended and that is what I thought I was doing. For the delay in displaying this to everybody, I am sorry. I don't see to have charge of that.

SENATOR LARSEN: Thank you.

SENATOR FULLER CLARK: Senator Burling, is it not true that, with this amendment that you brought forward, that there would no longer be fiscal cost and so that the FN would disappear?

SENATOR BURLING: Thank you, Senator. That is of course exactly the point. And that was the point that was made on the first day by the sponsor who said, if this goes into the joint board, there is no FN, we don't need to spend money. That is why the Executive Director of the Joint Board was there to say that was right, and oh, by the way, we have the time and the energy to do it.

SENATOR MORSE: Senator Burling, you might have hit a nerve with this one. This bill also would make subcontractors, which it says, "subcontractor means any person other than a supplier or material labor who enters into a contract, written or verbal, with a contract for performance of any part of the contract." If I go over here it says, "The board shall register and regulate home contractors and subcontractors." So basically, if you're a landscaper, you're a sprinkler installer, anything, would fall into that category. If the general contractor signed you up, you have to register with the state of New Hampshire.

SENATOR BURLING: Thank you for the question, Senator. That was not my understanding how it would work. I understand the interpretation that you are giving to it. That was not my understanding at the time I voted for the bill.

SENATOR CLEGG: Senator Burling, I know it was your intent to take out all of the fiscal responsibility or fiscal note. But, in the amended analysis it says the Attorney General has the enforcement authority. Has the Attorney General said that they could enforce the new regulations at no cost?

SENATOR BURLING: I don't have any specific statement from the Attorney General to that effect, however, the Attorney General's Office bears a blanket obligation to enforce all the laws of the state of New Hampshire. And if that is a fiscal note we are going to put on everything we do, we are going to have to start rewriting all the fiscal notes.

SENATOR CLEGG: Perhaps you'd like to come to Judiciary and you'll see that's exactly what they do is they put in little fiscal notes to take care of all the little laws that we change in criminal. Would you believe?

SENATOR BURLING: I would believe in my 14 years in the Legislature that that sometimes happens and sometimes it doesn't. No disrespect meant.

SENATOR LARSEN: Thank you, Mr. President. This bill had a very sad and interesting hearing. We heard, as you heard, someone came from Lebanon, a well-educated woman, a professor, explaining that she called the Better Business Bureau, she called neighbors, she checked out the person she hired to fix her roof. And, in the end, her roof was not fixed and she was out a great deal of money. In Concord, we heard at that hearing, a woman whose case actually made the front page of the *Concord Monitor* who had called the Better Business Bureau, she called the Office of Consumer Affairs, are there any issues with this contractor? She borrowed the money because she desperately needed to fix and make repairs on her house. She borrowed the money from friends. That contractor in fact, walked away with something like \$36,000 of her borrowed money and she was out the money and her house was not repaired. As you heard from Senator D'Allesandro, in the context of our discussing

this bill, I received an email from an architect here in town. I just wanted to share with you, quickly, that email urging me to support the bill in concept as I did in committee, and that is the way I have supported the bill because I do think that there are improvements we need to make to the licensing statute, but I do believe that we need to keep the pressure on that something happened with the licensing issue. The licensing of contractors. This architect writes, "contractor licensing is something long overdue and much needed especially in the residential market. As a licensed professional you would think there would be little chance of finding myself in the position of being swindled by a contractor. The majority of my work as an architect is commercial design, working with reputable long-established contractors in the area. So it was probably naive of me to have hired several small time contractors to build a house for me last year and have them walk off with the project paid in full. I had a business counsel advise me to put this behind me and not to pursue the close to \$50,000 in additional cost because of unethical business practices." He goes on to say that he believes that the continuing education requirements should be added and other things. But he says the "most important issue here, I view, is that the consumer should have the opportunity to hire a credentialed contractor." Clearly, we may not be passing this bill today, but I believe we need to keep the pressure on that the House has a bill. They are working on it. I understand they're studying it, but we need to keep that pressure on. The industry has said they're willing to do this. We have heard that in years past from many industries. It is time that we not back off of this and that every single person in this room keep an eye on that. If we are going to rely on the House study, we need to make sure something comes of that and that we do in fact take action because there are far too many consumers who are finding themselves, well-educated, researching consumers, who find themselves taken for a ride. It is time that we do something about it.

SENATOR GOTTESMAN: Thank you, Mr. President. In deference to all of the legislative experience from the former speakers that I hear about all the time, I come from a different field. I have represented contractors; I have defended contractors; I have sued contractors. And frankly, what people want when they enter into a contract is for the other person to treat them fairly and decently. But they really come to you and they want the perfect contract. Even the perfect contract does not prevent against a fraudulent contractor. This bill does nothing to establish any sort of rules or regulations as to what is required for a person to register other than they come forth, they pay a fee. The people that we are concerned about are treated, and I have read through the testimony at the hearing, they are treated either through the criminal system or they are sued in small claims court and justice normally either does prevail or unfortunately, they are out of assets and justice does not prevail. One of the sad disappointments I think is the fact that when people go to the Attorney General's Office with a consumer complaint, and this is something that has happened for years, people are referred there with an expectation that something positive is going to happen. Unfortunately, the Attorney General, as has been said, does not have the resources or the time to deal with these issues. They are very sympathetic, they take reports, and then they give the people a small claim application and tell them to go on their way. I see that this does not establish anything for the benefit of the consuming public who are really the ones who are getting hurt. The contractors who are people who work throughout the state are going to be given a heavy burden here and I don't think it's appropriate. I think it is a bureaucracy that is unnecessary. Thank you.

MOTION TO TABLE

Senator D'Allesandro moved to have SB 198-FN laid on the table.

Motion failed.

SENATOR MORSE: I guess I could have just deferred to Senator Gottesman except for one other point. Beside the fact that I don't think licensing accomplishes what people want it to accomplish, I think my point, Senator Burling, is you're staring with one group and this could be interpreted that there are a lot more groups, but when do we stop? We could include everyone in the state and licensing them and I don't believe, because I was on that committee the last biennium and we voted against this bill. It came out of the committee, I think, with the opposite of 4-1. So I just...you are going to lead to other industries and I don't believe that's what the intention is. So with everything that Senator Gottesman said about licensing, I agree with him. I also think we ought to think about we are going to be heading into other industries. Licensing all of these industries is going to accomplish nothing for this state.

SENATOR BARNES: Thank you, Mr. President. I want to apologize to my colleague Senator Burling. If I came across as scolding him, it certainly wasn't meant to be a scold to Senator Burling. I have known him too long to scold him. He scolds me more than I ever think of scolding him. I want to apologize to you if that came across that way.

SENATOR BURLING: No apology necessary.

SENATOR BARNES: Okay, Senator.

SENATOR BURLING: Thank you for the thought.

SENATOR D'ALLESANDRO: Thank you, Mr. President. We spent a lot of time on this piece of legislation and really heard from a myriad of thoughts from the legal perspective, from a contractor's perspective. Let me just talk to you for a moment about from a person's perspective because it is the people that we represent that have the problems. And it is the people who get fleeced. And when a person comes to me or comes to you or comes to anybody in this august body and says, "I entered into a contract with someone and they didn't deliver, they disappeared." Well, that kitchen is not done, that room is not finished, that driveway is not finished, and that is a problem. Where does that person go? What alternative do they have? How many of them can afford a lawyer? Really. How many of us can afford a lawyer. If you have two working people, you know, making \$8 an hour, how are you going to afford a lawyer at \$150 an hour? That is problematic isn't it? So where do they turn? Where do people turn? They turn to municipal government for help. Right, local welfare starts at the municipal level, that is where it's at. When they need something, they go to someone who they think can help them. They reach out for help. We formed a government so that people could reach out for help. That's why we have government. If we want to do away with government, you know, we can do that. That's not a problem. Up here every time we go through these machinations, sometimes we try to do away with government. But we built government so that, if a person had a problem, and that problem could not be resolved, they had recourse. That's what government is all about. That is what that local selectman is all about as Senator Morse pointed out. When they need that police cruiser, boy they need that police cruiser for public support and where do you go to get it? You say to that selectman who is an elected official, protect me. Save me. If there is a fire, I need that fire truck. If I am being

robbed, I need that policeman. So they go to the public. They go and they ask for help. If anything, let's hope that the discussion today brings to the surface the fact that people in New Hampshire are being taken advantage of and they are being taken advantage on a daily basis. And these people...you know, what's the most important thing you have? Isn't it your home? That's what I feel. I have lived in the same house for 34 years. I paid \$30,000 for that house. My mortgage was \$148 a month. I had to scramble to pay it. Scramble to pay \$148 a month. Why? Because my wife was pregnant and we needed another bedroom. My home is really my castle. If I put an addition on it as I did, I expect that person to do the job for me. If the person didn't, what recourse would I have? That's all. When people come to us, that woman from Concord came to me, came to my office, and said "I was taken advantage of." I read the article in the Concord Monitor. Then Leo Callahan comes to me with this list of what, 60, 70, 80 people who have been taken advantage of. As a public official, I have a responsibility don't I? Isn't that responsibility to try and help them? That is all. If we think we are creating a bureaucracy that is so intense and so large that it really negates the purpose of it, so be it. But I think that every one of us, if someone came to us, what's the first thing we would want to do? We would want to help them, wouldn't we? How would we help them? Well if we were rich we'd give them the money back. If we're not rich we'd say call the Attorney General. Right? Call the Office of Consumer Affairs. I mean, what else do we do? We can sit there and empathize from dawn to dusk. That isn't going to do us any good. So that is why we do these things. Again, it's a problem that's all. It is a problem and it is a problem that we have to face. Thank you, Mr. President.

SENATOR MORSE: Senator D'Allesandro, I am not going to make a motion to do away with government.

SENATOR D'ALLESANDRO: I appreciate that.

SENATOR MORSE: I think, would you believe, that there is another side to every story? And the small businessman, you don't have to worry about every general contractor, but if the small businessman takes a lot of hits out there in the community, and that's where I come from. The fact is, we lose on just as many things and you can suggest I can go to the court, but it is cheaper to walk away quite frankly. It is just as difficult for a small businessman in this state.

SENATOR D'ALLESANDRO: Thank you, Senator Morse, and I appreciate that. My father was a small businessman. My father was a plumber. In the plumbing and heating business. Took a lot of hits. I empathize for the small businessman. Eighty percent of the businesses in New Hampshire are small businesses. Of that 80 percent, the majority are very good, hard working, decent, honest, responsible people. I appreciate that fact. But when our state is being sort of invaded by those who aren't as reputable, who does it hurt? It hurts that small businessman that you're talking about that we want to protect.

SENATOR HASSAN: Senator D'Allesandro, I have actually heard a great deal from the Homebuilders Association which says it is in favor of some sort of licensing for contractors. My question to you, we have heard discussion about how this bill doesn't set any standards for contractors, but it is my understanding that this bill allows the board to set those standards. Am I correct?

SENATOR D'ALLESANDRO: Yes, that is correct.

SENATOR HASSAN: Thank you.

SENATOR D'ALLESANDRO: Thank you.

SENATOR LETOURNEAU: Senator D'Allesandro, not to belabor the issue, and I know you have a cold and your voice is tough here today.

SENATOR D'ALLESANDRO: I am working on it.

SENATOR LETOURNEAU: I know you are. My question is this. I have a second home in the northern part of the state and obviously with my duties down here I don't get to get up there very often and repairs need to be made. It is a small town, about 1,500 people. There is a local guy up there that does home repairs and fixes windows and does painting. He is just a do it all type of guy. I think that in the northern part of the state we have a lot of those folks. Will these folks have to be part of this as a result of passing this legislation? And how does it affect those guys that are basically living from hand to mouth? And thank you for answering the question.

SENATOR D'ALLESANDRO: Sure. Thanks for the question. It is a very good one because there are people...I lived in the north country. I lived in Conway. I know what it's like. I know when people worked at Birchwood, for what \$5 an hour and couldn't make a living. Couldn't heat their homes and so forth so they did a lot of the things that you are talking about. This would call for the licensing. If you are a contractor doing this scope of work would have to be larger than just doing the simple things I think that you are referencing. But it may come to the point where that person may want to be licensed.

SENATOR LETOURNEAU: But does he fall under this particular piece of legislation?

SENATOR D'ALLESANDRO: In the legislation it talks about a contractor and gives the definition of a contractor. It says, "that a residential contractor means the construction, reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, demolition or construction or addition to any building containing at least one, but not more than four dwelling units, which building or portion thereof is used or designated to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or buildings." So that is what residential contracting is. Now the subcontractors on line sixteen. That subcontractor is "the supplier of labor and materials who enters into a contract to do the work for the residential contractor." That could be the person that you're discussing.

SENATOR LETOURNEAU: We're looking at two different bills here so I am sorry. I'm not in sync with you here. This is the amendment I am looking at.

SENATOR D'ALLESANDRO: I am just referencing the corpus of the bill.

SENATOR LETOURNEAU: Thank you.

SENATOR FOSTER: Thank you. I rise to speak very briefly. I am a co-sponsor of the bill and the reason I did it was complaints that I got from constituents. When I was out campaigning door-to-door, as we sometimes all do, we make small talk with the people who we meet as we go. A gentleman was working on his breezeway/porch/sunroom and I was complementing him on it and he looked at me and started to glare. I said what's wrong? He said, "Well, I am doing this because the guy who I hired to do it 18 months ago never finished it." He went on to ask me

why it is that we don't have any regulation for the contracting business. I really couldn't give him a particularly good or solid answer. I can recall last session standing up here when we were talking about a bill, I think, to allow people called paralegals to practice law and I asked the Senate Research to give me a list of the various professions that we regulate, and I read them out, and there was certainly a wide range of occupations which we either license or regulate in one way or the other, things as simple as hairdressers and so forth. And, as Senator D'Allesandro said, the most important thing or the most item that people spend the most money on generally in their life is their home. After that, it's their vehicle. The idea that we don't put any sort of set of standards or goals for home contractors just doesn't seem to me make good sense. This may not be the perfect bill. I heard other people say that it probably needs some work. But it is a starting point. I received many of the calls that you did and people said there ought to be something about education in this bill. That is the important thing. That is how we are going to get the best product out there. I agree with that. The bill ought to be worked on in that regard. But I do think that we ought to move forward and address our constituents' concerns and put this very important profession, put some regulation on it, put some licensing on it, so when there are those few, and I don't think it is a lot of homebuilders who are the problems, I think it is very few, but it gives, in some sense, some of the other ones bad names. Most people in the business are honorable to people. I was receiving calls from people that knew them and they do good work. That is not what this is about. It is to try to help those people who have bad experiences deal with that problem. Thank you, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the ought to pass and I also rise in opposition to the floor amendment. The New Hampshire Plumbing and Mechanical Contractors Association did a lot of research and there's a quite comical set of letters back and forth between them and the Attorney General where the Attorney General says "I can't give you the information, it's confidential", and then you get another one and it says, "Well, I'll give you this much." But they took a look at it and quoting out of the letter that they sent me yesterday, "The Attorney General's Office has stated that the Consumer Protection and Anti-Trust Bureau had received 313 complaints against home contractors in 2004." I think that number was used earlier. But of the 313 complaints that the Attorney General sent them, 194 were against potential home improvement contractors, 87 were multiple complaints against the same contractor, 32 companies against obvious non-contractors such as America Online, the Concord Police Department, Cornerstone Benefit and Retirement Group, the Maine, Massachusetts and Vermont Attorney Generals' Offices, New Hampshire Legal Services, and others who clearly are not contractors, but they are all included in that 313 number. So, I don't think that we got the correct information from the Attorney General's Office to begin with. Now, I have stood up here before and said the reason why people have problems with contractors who don't finish the job is because they don't bother to look to see what that contractor had done before, and they go with the lowest price. It is typically half or less of anybody else's bid. If that doesn't tell you that you are going to get what you paid for, nothing else will. I also want to point out that in the floor amendment, which I understand, this is probably in the original bill, we set up a new group of building inspectors. The board will have building inspectors who will come and inspect your work. Now, the municipality also has building inspectors. So I am wondering

if the local building inspector says “Yeah, you did it right”, and the board’s inspectors says “No, you did it wrong,” who rules? It doesn’t say. I am also worried that this board will decide, when they decide what the professional and ethical standards are, that they will interfere in the state-wide building code. That is a board all its own and it decides how certain things are supposed to be accomplished in order to meet the state codes. Now we are going to set up another board, and we will have two boards arguing over who is right. Well we got two boards, two inspectors. It just doesn’t work. The problem is that people don’t take the time to **TAPE CHANGE** that there are a lot of small businesses in this state who give away their work, but of course you don’t hear about that. We would be punishing them. There are a lot of landscape companies who drive by the elderly couple’s house and plow the driveway for nothing because it’s the right thing to do. There are also a lot of landscape companies who do leaf clean up for the elderly for next to nothing. We don’t hear about all the good stories. All we have heard around here is about a few bad eggs. Let me remind you that those bad eggs include the Maine, Massachusetts and Attorney General’s Offices. So I would suggest to my colleagues that we vote inexpedient to legislate and move on. Thank you.

SENATOR FULLER CLARK: Senator Clegg, could you clarify for me our state building code? Does it apply to both commercial and residential properties?

SENATOR CLEGG: Only anything over two families.

SENATOR FULLER CLARK: Thank you.

SENATOR BURLING: Very quickly, Senator. Had you sat through all the testimony as those of us on the committee did, you would know that your final comments strike a very poignant chord. It is awful for us as legislators to victimize the victims twice. The people who had the courage to come talk to us were people who had done everything right. They were people like my mother, my brother, my cousins. I see them as my neighbors and I see them as deserving of our support. This bill may not be the right answer, but it is clearly not the right answer to blame them for their own victimization. They trusted people who held themselves out to be contractors, and they were financially devastated for the costs. My second comment, Senator, I agree with everything you said about the list of complaints. But that proves the point I was making about the devastating mess at the Department of Justice, Office of Consumer Protection. There is no consumer protection in the Department of Justice. There is good will, there is good effort, but there is not capacity. The fact that that list that you just read comes out the way it is ought to be proof to us that we need to do something. Thank you.

SENATOR CLEGG: I just feel that I have to. I don’t believe that we victimize people twice. They are only victims once. If they don’t take the time to investigate what they are doing, that’s when they’ve become the victims. If the Attorney General’s Office cannot keep track of whether or not the Attorney General’s Office in Maine, Massachusetts and Vermont, is a contractor, then we have bigger problems over there than just in the Consumer Protection Division.

The question is on the adoption of the floor amendment.

Floor amendment failed.

The question is on the committee report of ought to pass.

Motion failed.

Senator Clegg moved inexpedient to legislate.

Adopted.

SB 198-FN is inexpedient to legislate.

SB 200-FN, establishing the uniform athlete agents act. Public and Municipal Affairs Committee. Ought to pass, Vote 3-2. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 200-FN ought to pass. Senate Bill 200 establishes the Uniform Athlete Agents Act which governs permissible conduct and procedures to be followed by an athlete agent and a student athlete. Specifically, it establishes a code of conduct to be followed by athlete agents and athletes towards one another. This bill is supported by the Universal Code Commission and the National Collegiate Athletic Association. It currently has taken up by 13 states and it is pending in six others. This bill is needed in this state as we need to ensure that our student athletes are protected from unscrupulous sports agents dangling riches in front of their eyes. Currently New Hampshire has no regulation of athlete agents and this would establish a code which could be used and would stand the test across state lines. The Public and Municipal Affairs Committee supports this bill and asks for your support. Thank you.

The question is on the committee report of ought to pass.

A division vote was requested.

Yeas: 11 - Nays: 12

Motion failed.

Senator Morse moved to re-refer.

Adopted.

SB 200-FN is re-referred to the Public and Municipal Affairs Committee.

MOTION TO REMOVE FROM THE TABLE

Senator Estabrook moved to take SB 109-FN off the table.

SB 109-FN, relative to catastrophic special education funding.

The question is on the motion to remove from the table.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Burling, Green, Gottesman, Foster, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Letourneau, Morse.

Yeas: 11 - Nays: 13

Motion failed.

SB 13, relative to placement and removal of political advertising. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Estabrook for the committee.

Transportation and Interstate Cooperation
March 10, 2005
2005-0565s
03/09

Amendment to SB 13

Amend the bill by replacing section 1 with the following:

1 Placement and Removal of Political Advertising. Amend RSA 664:17 to read as follows:

664:17 Placement and Removal of Political Advertising. No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. ~~[The earliest date on which political advertising may be placed or affixed shall be the last Friday in July prior to a state primary.]~~ ***Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes.*** All political advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary. No person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to any private property except the owner of the property ~~[or a law enforcement officer removing improper advertising].~~ ***Political advertising placed contrary to the requirements of this section shall be removed by law enforcement officers or employees of the department of transportation;*** provided, however, that, before a law enforcement officer removes any advertisement, ~~[he]~~ ***the officer*** shall notify the candidate ***and the owner of the advertisement*** that it is improper, and allow the candidate ***or the owner of the advertisement*** 24 hours to remove the advertisement ~~[himself]~~.

2005-0565s

AMENDED ANALYSIS

This bill eliminates the date requirements for placement of political advertising and changes the requirements for advertising removal. This bill also permits the placement of political advertising in state-owned rights-of-way under certain circumstances.

SENATOR ESTABROOK: Thank you, Mr. President. I move Senate Bill 13 ought to pass as amended. This bill eliminates the date requirement for placement of political signs and changes the notice requirement for sign removal. The amendment dealt with problems the committee had with language regarding state owned "right-of-ways." The Transportation and Interstate Cooperation Committee unanimously asks for your support of SB 13. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 31, establishing a committee to study a recycling fee for automobiles. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 3-1. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 31 inexpedient to legislate. After discussion and considerable consideration and research, the committee feels that this bill would have unexpected consequences. For example, the UK has similar legislation, and is experiencing a drastic increase in abandoned vehicles. While the committee thanks the sponsor for bringing this issue up for consideration, we feel that now is not the time to institute a fee for recycling vehicles. The Transportation Committee asks your support for the motion of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 89-FN, relative to financing federally aided highway projects. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 89 ought to pass. This bill establishes a class of state bonds for the purpose of financing project costs related to the widening of Interstate 93 and other federally aided highway projects. This bill contains a provision for the sale of surplus property in the project area to pay for the project financing. The committee feels that improving I-93 means more tourists will visit the state, and hopefully, the ski areas that have seen a drop in recent years will gain back the business they have lost. The Chamber of Commerce believes this bill is an important key to unlocking a new age of economic development starting in the southern tier of the state, which will likely be felt all the way to the north country.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 120, relative to the purchase of rail properties. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Morse for the committee.

Transportation and Interstate Cooperation
March 10, 2005

2005-0562s

06/01

Amendment to SB 120

Amend the bill by replacing all after the enacting clause with the following:

1 Purchase Price for Rail Properties; Time Limits. Amend RSA 228:60-b, I and II to read as follows:

I. All rail properties within the state offered for sale by any railway corporation after July 1, 1990, shall be offered for sale in writing to the commissioner in the first instance. In no event shall a railroad corporation offer to sell or otherwise dispose of rail properties to any person or entity on terms or conditions more favorable than those offered to the state. The state of New Hampshire acting through the commissioner shall notify such railroad corporation in writing of its acceptance or rejection of an offer within 90 calendar days of receipt of such offer. ***When the commissioner accepts an offer, he or she shall promptly notify the governor and the governor's council.***

II. ***When the governor receives notice of the commissioner's acceptance of an offer to purchase rail property, he or she shall schedule the offer for consideration by the council within 90 days of the date on the notice.*** The state of New Hampshire, acting through

the commissioner with the approval of governor and council, may match any verifiable bona fide offer made for any rail properties within the limits of funds available to the commissioner for this purpose. In the event that the property offered for sale to the commissioner is to be purchased for other transportation purposes, including recreational trails, funds for such purchase shall be identified and provided by the state agency or political subdivision requesting the commissioner to acquire the property. The state or a political subdivision thereof shall retain title to all land purchased under the right of first refusal. Cooperative use and management agreements with state agencies or political subdivisions providing acquisition funds shall be executed for parcels acquired with other than department of transportation funds. In the event that all or any part of the parcel so acquired is needed for transportation of goods or services of any kind or for any other purpose deemed necessary by the commissioner, the contributing entity shall be entitled to a refund of contribution or replacement land as determined by RSA 4:40. Any such right of first refusal shall be offered in writing to the commissioner who shall notify such railroad corporation in writing of acceptance or rejection of such an offer within 90 calendar days of receipt of such offer.

2 Effective Date. This act shall take effect 60 days after its passage.

2005-0562s

AMENDED ANALYSIS

This bill requires the commissioner of transportation to notify the governor and council when accepting an offer to purchase railway property and requires the governor and council to act on the acceptance within 90 days of notification.

SENATOR MORSE: I'll try my luck for a third time. Thank you, Mr. President. I move ought to pass as amended. This bill requires that when the state accepts the offer to purchase a railroad property, the state shall complete the purchasing process within 90 days. This legislation was introduced primarily to avoid situations similar to the conflict that arose between the Governor and Council and the Gilford Rail System in Salem, where the state lost a bid essentially because the Governor blocked the vote from coming before the Council. All parties are in favor of this legislation and the Transportation and Interstate Cooperation Committee unanimously asks for your support on the motion of ought to pass as amended. Let me explain why I hesitated. Basically right now, the Department has 90 days, and basically, we have given Governor and Council 90 days to put it on and up and down a vote on it. That was what we came in with an amendment for.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 129-FN-A, relative to establishing a fee on the importation of motor fuels to fund air quality mitigation and establishing a dedicated fund. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-2. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move Senate Bill 129 inexpedient to legislate. Senate Bill 129 establishes a fee on the impor-

tation of motor fuels to fund air quality mitigation and establishes a fund for programs to mitigate emissions from mobile sources. The committee has concerns regarding the constitutionality of this legislation, as the funds being diverted belong to the highway fund. While the committee understands the concerns of the DES, we feel that the funds belong where they are. The Transportation and Interstate Committee asks your support for the motion of inexpedient to legislate. And I want to thank you very much.

SENATOR BURLING: Thank you, Mr. President. Being one of the two votes who voted in favor of passage of this bill, I would just like to say this bill came to us from the state. They wanted some source of revenue to help them with mobile source reduction, some source of cash flow. We shouldn't miss the point that mobile source reduction is going to require some money, and I understand the constitutional argument put forward, but we have the example of pre-existing importation fees already used to raise revenue for non-highway fund items. Two of us made the decision that this was a good use of the money and I for one, intend to vote against the inexpedient to legislate.

The question is on the committee report of inexpedient to legislate.

A division vote was requested.

Yeas: 13 – Nays: 11

Committee report of inexpedient to legislate is adopted.

Senator Barnes is in opposition to the motion of inexpedient to legislate on SB 129-FN-A.

SB 148, relative to motorcycle inspections. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-2. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 15, 2005

2005-0638s

03/01

Amendment to SB 148

Amend the title of the bill by replacing it with the following:

AN ACT relative to motorcycle inspections and relative to electronic inspection information.

Amend the bill by replacing all after section 1 with the following:

2 Electronic Transmission of Vehicle Inspection Information.

I. Notwithstanding any other provision of law to the contrary, the department of safety shall not require, as a condition of being a vehicle inspection station, that any inspection station contract with Gordon-Darby NHOST Services, Inc., or otherwise participate in any department-run program requiring state vehicle inspection information to be transmitted to the department of safety electronically.

II. To the extent that anything contained in paragraph I conflicts with the terms of the department of safety's contract with Gordon-Darby NHOST Services, Inc., the department shall terminate the contract pursuant to paragraph 5 of the contract.

III. The department of safety shall adopt emergency rules, pursuant to RSA 541-A, that have the effect of establishing the broadest possible waivers for consumers consistent with 40 C.F.R. sections 51.350 through 51.373.

IV. The department of safety shall not require, as a condition of being a vehicle inspection station, that any inspection station perform OBD II testing on vehicles that are not equipped with on-board diagnostic systems meeting the federal Environmental Protection Agency OBD II standard.

3 Effective Date.

I. Section 1 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

2005-0638s

AMENDED ANALYSIS

This bill permits an inspection station to be designated as a "motorcycle only" inspection station, which shall be exempt from the OBD II emission testing requirements. This bill also prohibits the department of safety from requiring inspection stations to enter into certain contracts or participate in certain programs as a condition of being a vehicle inspection station. This bill also requires the department of safety to adopt emergency rules.

SENATOR LETOURNEAU: Thank you, Mr. President. Seems like I lost my remarks here. I've got them. Thank you very much. I move Senate Bill 148 ought to pass as amended. This bill permits an inspection station to be designated as a motorcycle only inspection station which is exempt from OBD II emission testing requirements. This is perfectly logical, since motorcycles do not have an OBD II equipment. Requiring stations that only inspect motorcycles to participate in the OBD II inspection testing program will create an added cost with no environmental benefit. The committee amendment addresses concerns we all became aware of through constituent complaints and media reports. As part of the emissions testing program, the state has entered into a contract with a private company to electronically transmit the test data from garages to the DMV. That's okay. But then the state went on a step further by saying that the garages that don't do the electronic data transfer, they can't do inspections. This places an unfair burden on small garages and garages that inspect vehicles that don't have OBD II equipment. If we pass the committee amendment, four things will happen. One, we will still be in compliance with the EPA Clean Air Act regulations. Two, the Department of Safety is instructed to adopt rules to take advantage of waivers specifically authorized in the federal EPA rules so that we provide New Hampshire consumers with as much protection as possible. Three, we prohibit DMV from requiring inspection stations to participate in the electronic data transmission. Four, if this violates the terms of the contract, then the DMV is instructed to terminate the contract. We can do this because the contract has a specific provision that authorizes the Department of Motor Vehicles to terminate the contract with or without cause and was instructed to do so by statute. The Transportation and Interstate Cooperation Committee asks your support for a motion of ought to pass as amended. Thank you very much.

SENATOR ESTABROOK: Thank you, Mr. President. I would just like to rise as a member of the committee and explain to the full body that this bill started out as a simple bill to exempt motorcycle inspection stations from OBD II testing which made perfect sense. Then as the committee sat in executive session, we were handed a rather complex amend-

ment during exec, which turned this bill into a general OBD II testing bill. While we all agree that there are clearly problems with the process we are about to embark on, the last minute nature and extensive nature of the amendment presented in committee took us so far a field and took us down a path of entering into statutory language regarding existing contracts the state has that we felt that was certainly not the way to go. I hope that the body will vote down the committee amendment, in favor of a floor amendment that will be coming forward from Senator Burling, which will also help to address this situation in an immediate fashion, but do so in a manner that will be far less complicated for the state. I will let him speak exactly to those specifics, but please listen to those arguments.

SENATOR BARNES: Thank you, Mr. President. I think the question is of you, Mr. President. We heard about an amendment that we haven't seen. I would personally, could we take and put this on the table? It is not a fiscal note. Could we do something? If I move to put it on the table just so I can look at that amendment, and then bring it back off today, promise to bring it back off today, just give me a chance. I want to see what Senator Burling's amendment is. Is that a fair deal or no?

SENATOR EATON (In the Chair): Well Senator Barnes, we have an amendment in front of us now, the committee amendment. We can vote that up or down and then we can speak with Senator Burling as to what his amendment is and decide from there if you would like.

SENATOR BARNES: Thank you, Mr. President.

Amendment adopted.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

March 15, 2005

2005-0643s

03/01

Floor Amendment to SB 148

Amend the title of the bill by replacing it with the following:

AN ACT relative to motorcycle inspections and relative to emission inspection requirements.

Amend the bill by replacing all after section 1 with the following:

2 Emission Control Equipment; Temporary Waivers. Amend RSA 266:59-b, V to read as follows:

V. If a vehicle fails the EPA OBD II test and it passes all other inspection requirements under this chapter, then it shall be issued a temporary waiver that permits its operation for 60 days from the date of issuance, in order to make required repairs. A vehicle shall be eligible for only one such waiver during its inspection cycle. ***No person may sell a vehicle that is the subject of a temporary waiver without notifying the purchaser of the OBD II test failure; knowing failure to give such notice shall constitute grounds for rescission by the purchaser of the sales contract.***

3 OBD II Temporary Waiver. No temporary waiver issued pursuant to RSA 266:59-b, V shall expire before April 1, 2006.

4 Effective Date. This act shall take effect 60 days after its passage.

2005-0643s**AMENDED ANALYSIS**

This bill:

I. Permits an inspection station to be designated as a "motorcycle only" inspection station, which shall be exempt from the OBD II emission testing requirements.

II. Prohibits a person from selling a vehicle that has failed the EPA OBD II test without notice of the failure to the purchaser.

III. Prohibits temporary waivers from the EPA OBD II test requirements from expiring before April 1, 2006.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I wish to offer a floor amendment. Mr. President, there were two approaches defined in committee to dealing with the problem that we face with the OBD II. One is encapsulated in the committee amendment, which has some problems I'll address in a minute. The other approach was to provide for the OBD II system to go forward but alleviate the burden of failures of vehicles to meet the emissions standard. What this amendment does is provide us, and I should say that I am getting a little dodgy about offering you guys floor amendments, but I will take one more crack at it today. This floor amendment offers us the other approach. And what it does is it takes the existing statute and it goes to the part of the existing statute which talks about what happens when a car fails OBD II on the emissions side. Okay? You plug it in, it goes beep, and there is something wrong with your emissions system. What this statute does is take the existing 60 day special waiver permit, and extend that to April 1, 2006. My purpose is to provide a system in which the contract and these machines get up and running, but without triggering the majority of negative impacts of requiring repairs on the emissions side. Now some people will have their cars inspected, they'll plug in the machine and it will go beep and somebody will say "Well you need to fix your emissions" and some people will go ahead and do it. Some people won't. We won't require it, but we will have the system in operation and my hope is that we will have a lower incidence of negative consumer reaction to the system. We get a chance to see if it works. Now, Mr. President, if I may, I'll just explain my caution about the committee amendment. My caution is based on almost complete ignorance of the federal consequences if we pass paragraph I of the committee amendment. I spoke to this twice in committee. I said, "Can anyone give us a definitive answer as to what will happen to federal highway funds, federal clean air funds, other federal grant moneys?" And I am sorry, Mr. President, I just couldn't get a complete answer back. Subsequent to that, I have heard from a couple of people who I won't mention because I don't want to destroy their reputations, but people that I trust in this area and both have said "Be careful because you may be sacrificing your access to federal highway monies if you pass that provision." I don't know, Mr. President. My purpose in offering this floor amendment was to give us another way of going forward. That is the best that I can offer at this point.

Recess.

Out of recess.

Senator Burling moved to withdraw his amendment without objection.

Floor amendment 0643 withdrawn without objection.

The question is on the adoption of the bill as amended.

SENATOR MORSE: Senator Burling, I just want to state this and I think the public should understand it. In section III, and I know it is written by your friends because it is all lawyer stuff. But basically the broadest...it was the intent when we were drafting this that we give the broadest possible waivers for consumers. What you are asking, you have two choices this coming year. One is to put a dollar limit of what people have to expend, or we can come back and say the first year we are going to use as experience to see what it is actually doing. If it is this body's intention, which I sense, that we would rather see the year, then when we are working this all out, I think that could come out of this. It's already there in the legislation to do it. So I don't think we need this amendment, but I do believe the consensus here is that we would like to see a year and I think that we should head towards that. Thank you.

SENATOR BURLING: Thank you.

SENATOR BARNES: Very, very quickly. Is it my...before we vote on this...is it my understanding that this contract went to Governor and Council?

SENATOR MORSE: The answer is yes.

SENATOR BARNES: Do you have a vote from the Governor and Council how they voted on this contract?

SENATOR MORSE: No I don't. But it obviously passed because they ordered the contract.

SENATOR BARNES: Thank you very much.

Adopted.**Ordered to third reading.**

SB 151-FN, relative to issuance of dealer plates to bonded motor vehicle dealers. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I would like to move re-refer to committee on this bill. Okay? I ask that body overturn the ITL motion so we can re-refer.

SENATOR EATON (In the Chair): Senator Letourneau, so as I heard you say, you wish to vote down the inexpedient to legislate to re-refer.

SENATOR LETOURNEAU: Vote down the inexpedient to legislate so I can offer a motion to re-refer.

SENATOR BARNES: I see an "FN" on here. Does this cause a problem?

SENATOR EATON (In the Chair): From what I understand there will not be an "FN" on that. It will not be going to Finance.

SENATOR BARNES: You're erasing the "FN"? Thank you.

SENATOR EATON (In the Chair): We have had the motion from Senator Letourneau to recommit. Would you like to caucus on that?

SENATOR FLANDERS: Our intent is that we re-refer and come back with a new bill next year. I believe that is re-refer.

SENATOR EATON (In the Chair): So we do have to vote down the...

SENATOR CLEGG: We wouldn't be back with a new bill. It would re-refer back to the committee so they can work on it and make the bill come out right next year.

SENATOR EATON (In the Chair): That is correct.

The question is on the committee report of inexpedient to legislate.

Motion failed.

Senator Letourneau moved to re-refer.

Adopted.

SB 151-FN is re-referred to the Transportation and Interstate Cooperation Committee.

SB 155-FN, prohibiting rafting of boats on lakes and ponds. Transportation and Interstate Cooperation Committee. Re-refer to committee, Vote 6-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 155 re-referred to committee. The Transportation and Interstate Cooperation Committee feels that this issue needs more in-depth consideration and unanimously asks for your support of the motion of re-refer. Thank you.

Adopted.

SB 155-FN is re-referred to the Transportation and Interstate Cooperation Committee.

Senator Boyce is in opposition to the motion of re-refer on SB 155-FN.

SB 157-FN, relative to all terrain vehicles used for agricultural purposes. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. We have taken care of all of the easy ones and now we are going to get down to some of the difficult bills we have today. If you remember last year, we had a situation where a person had an ATV registered as a tractor and was going down a town road to pick up vegetables in his field and we had a state trooper that didn't have enough to do that day, and he arrested him. And come to find out, it was not legal for him to have a plate on that ATV. I didn't think that was fair and I thought that we should look at commonsense. So as a result of that, I sponsored this bill. I went over to the Department of Safety and talked to the people there, and we have come up with a plan that I am asking you to support today, that we can put agriculture plates on this ATV as long as they do certain lights and stop lights. They can take the ATV tractor from their stand down to the field and bring their produce back. Thank you.

SENATOR CLEGG: Senator Flanders, are you sure that was a trooper and not one of the DMV truck cops?

SENATOR FLANDERS: I don't know whether it was an upside down car or a right side up car. I don't know which one it was.

SENATOR CLEGG: I am sure it wasn't a trooper. Thank you.

Adopted.

Ordered to third reading.

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 164 ought to pass. Essentially, Senate Bill 164 requires that the DOT contracts with a licensed real estate agent to sell excess commercial and industrial property owned by the Department. The proceeds from the sale will be deposited back into the turnpike fund or the highway fund, depending on where the money originally came from. The committee feels that the state should make as much money from the sale of property as possible, and asks for the support of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-1. Senator Letourneau for the committee.

MOTION TO TABLE

Senator Letourneau moved to have SB 180-FN-A-L laid on the table.

PARLIAMENTARY INQUIRY

SENATOR ESTABROOK: Parliamentary inquiry Mr. President?

SENATOR EATON (In the Chair): Parliamentary inquiry.

SENATOR ESTABROOK: Thank you, Mr. President. I favor the tabling; I just need a clarification. This bill has an "FN". So, if we put it on the table, are we able to remove it past the deadline with a simple majority?

SENATOR EATON (In the Chair): Yes. We are not past deadline and it's a local option financing.

SENATOR ESTABROOK: Thank you.

Adopted.

LAI D ON THE TABLE

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs.

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0560s

06/01

Amendment to SB 195

Amend the title of the bill by replacing it with the following:

AN ACT relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

Amend the bill by replacing all after the enacting clause with the following:

1 Contingency; Date Changed. Amend 2004, 175:9, I to read as follows:

I. Section 4 of this act shall take effect on ~~[the later of] January 1, 2007 [or 6 months after federal approval has been received under paragraph II of section 1 of this act, as certified by the commissioner of the department of environmental services to the director of the office of legislative services].~~

2 Repeal. 2004, 175:1, II, relative to opting out of the reformulated gasoline program, is repealed.

3 Effective Date. This act shall take effect upon its passage.

2005-0560s

AMENDED ANALYSIS

This bill changes the effective date of the law requiring the elimination of certain substances from gasoline supplies to January 1, 2007. This bill also repeals a requirement that the department of environmental services seek federal approval to opt out of the federal reformulated gasoline program.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 195 ought to pass as amended. This bill changes the effective date of the law requiring the elimination of certain substances from gasoline to January 1, 2007. The amendment reinforces the date and is the same language as the bill coming over from the House. The Transportation and Interstate Cooperation Committee unanimously asks your support for the motion of ought to pass as amended. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 208-FN, relative to certification of driver education instructors and driver training requirements. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0563s

10/01

Amendment to SB 208-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to certification of driver education instructors.

Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

2005-0563s

AMENDED ANALYSIS

This bill allows persons approved to teach driver education, but who are not certified secondary school teachers, to teach driver education in schools.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Senate Bill 208 ought to pass as amended. This bill allows persons who

are qualified to teach driver education, but are not certified secondary school teachers, to teach driver ed in schools. It's a question of mixing the certifications. The amendment, written by the sponsor, removes the second half of the bill which required that everybody have ten hours of observation time. The Transportation and Interstate Cooperation Committee unanimously asks your support for the motion of ought to pass as amended. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21). Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

Transportation and Interstate Cooperation

March 10, 2005

2005-0561s

06/01

Amendment to SCR 2

Amend the bill by replacing all after the resolving clause with the following:

That the state of New Hampshire strongly supports a timely reauthorization of TEA-21 with sufficient funding levels and no unfunded mandates or burdensome conditions attached to funding, thereby allowing states to address the transportation needs of their citizens and community; and

That the state of New Hampshire urges members of the New Hampshire congressional delegation to work with other members of Congress to adequately consider the needs of the Northeast, with its higher labor costs, denser populations and severe weather conditions and to ensure that New Hampshire receives the amount of funding necessary to meet our needs; and

That copies of this resolution be forwarded by the senate clerk to the members of the New Hampshire congressional delegation.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move Senate Concurrent Resolution 2 ought to pass as amended. The Transportation and Interstate Cooperation Committee feels that the state of New Hampshire should send a strong and united message to our congressional delegation to consider the needs of the northeast. The Transportation and Interstate Cooperation Committee asks your support for this motion of ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 84, relative to live racing at licensed pari-mutuel facilities. Ways and Means Committee. Inexpedient to legislate, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. At the request of the sponsor of this bill, the committee has asked that this be found inexpedient. So we are asking that Senate Bill 84 be inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 116, relative to payment procedures for the utility property tax. Ways and Means Committee. Ought to pass, Vote 4-0. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 116 ought to pass. The bill changes payment procedures for the utility property tax. Currently the utility property tax acts like an income tax return which creates internal procedural challenges for the department. Senate Bill 116 will change the payment procedure such that the utility property tax will be administered in the same way as other property taxes which will be better for taxpayers and the department. The committee recommends ought to pass on Senate Bill 116. Thank you, Mr. President.

Senator Green offered a floor amendment.

Sen. Green, Dist. 6

March 17, 2005

2005-0720s

09/04

Floor Amendment to SB 116

Amend the title of the bill by replacing it with the following:

AN ACT relative to payment procedures for the utility property tax and prohibiting the taxation of internet access and internet activities under the communications services tax.

Amend the bill by replacing all after section 3 with the following:

4 New Section; Communications Services Tax; Prohibition on Taxing Internet Access and Internet Activities. Amend RSA 82-A by inserting after section 5 the following new section:

82-A:5-a Prohibition on Taxation of Internet Access and Internet Activities. This tax shall not be imposed on internet access and internet activities.

5 Effective Date. This act shall take effect July 1, 2005.

2005-0720s

AMENDED ANALYSIS

This bill changes payment procedures for the utility property tax.

This bill also prohibits the taxation of internet access and internet activities under the communications services tax.

SENATOR GREEN: Thank you, Mr. President. I would like to offer an amendment to this bill. As I had intended, prior to this particular situation on this part of the bill which was 94, which was, I didn't realize it was inexpedient to legislate. That's why I got confused. I am sorry, Mr. President. However, I found a bill that had germaneness to it. Oh, God. Okay. What this basically is, is the part of 94, that was a part which was an integral part of what I was trying to do, which was to amend, to disallow any further taxation of the Internet. For those of you who don't know, the Internet is now being taxed. You can't believe the number of people that I spoke with that didn't realize that we were taxing the Internet in this state. Well we are. Now being **TAPE CHANGE** and the

realization of wanting to make sure we have revenues to cover when we reduce revenues, the reduction that I proposed was not made available. But the merit of not taxing the Internet is still valid. Let me tell you what we are talking about here. The federal government has three times in a row, at three years at a time, put a moratorium on taxing the Internet. That is now going on. Congress again in this year, in November of '04, once again passed the third three year bill nationally to put a moratorium on taxing the Internet. So we in New Hampshire, like nine other states in this country, when the moratorium was first put in, in 1998, we or one of the states that said, now I want to emphasize "said", that we were taxing the Internet prior to the moratorium, the first moratorium. Now in the moratorium that the feds passed, there was a grandfathering clause that said, if you are taxing the Internet prior to the first moratorium, you are allowed to continue that portion that you were taxing at that time. In other words, you were allowed to continue that only. The debate has always been in Congress whether or not when the moratorium was extended, the House has always voted in Congress to do away with the moratorium provision and say no states could tax the Internet. The Senate has always held out and said yes, we want to maintain the grandfathering. The problem I have, and I want to tell you this as nicely as I can, there is no evidence that I can find that the state of New Hampshire was taxing the Internet prior to 1998. They have pushed the envelope because DRA's job is to generate revenue. Now the Internet tax, the communications service tax basically said two-way communications. Now, we are taxing the Internet now. It depends on who you talk to how much we are taxing the Internet. Now last year as I dealt with this issue, DRA testified that they were taxing the Internet at about \$3.5-\$4 million a year. That's what they said. I had no reason to disbelieve them. I get a fiscal note on this and it says \$4-\$15 million depending on the details. Well, that is fine. The problem I am having is that they're taxing our small businesses, they're taxing individual phone users, they're taxing anybody who is using the Internet. Now, this summer, last summer, we had a period of, I call it a window, when the second moratorium expired and the third moratorium was put in place. DRA had decided at that time this was a good time to solidify our position on the grandfathering clause. Because I think that people would be suing them for taxing them at this point under the Internet. But why tax them? The people that are doing the taxing are just passing it on to the consumer? So, the bottom line is, this summer they had a hearing which was required for them to make rules. At that hearing we had over 100 people show up over to the DRA conference room. What they were proposing was to not only tax under what they are doing under the grandfather, they were proposing to expand the amount of taxes that they were going to get from the Internet. And they were going to start taxing such things as email. Now all of you, I don't know how all of you function in your world, but in the businesses that I deal with and the individuals that I deal with, taxing the Internet is creating a major problem and you are affecting the economy. The economic economy in this state relies on that cutting edge technology. So the question becomes, okay, should we be doing what the federal government is doing or should we not? And should we, the state of New Hampshire, be taxing the Internet? There was a House Resolution 9 in 2003, sponsored by Representative Thomas and Senator Eaton, which was basically a resolution urging the federal government to extend the Internet tax freedom act moratorium. So what I'm saying is, the House passed this, by the

way, by voice vote, it wasn't even close. So what I am saying is, it is about time that we take an official position that we are, as a state, are not going to tax the Internet. So I'm asking you as an amendment to this bill, to put part of the bill that I feel is important that I was going to present to you, but the way the parliamentary procedure worked out, it didn't work out, to not tax the Internet. Go on record and stop this debate, which is the legal debate. And we are going to have court cases before this is over. Let's put ourselves in the position of preventing litigation and preventing undue problems for our businesses and for our individuals. And any of you in this room, I know, I think, I believe, you mostly all concur with me, that the Internet is critical to the expansion of our economic activity in this state. So that is my amendment. I would ask you to pass the amendment, ought to pass as part of this bill. I am going to call for a roll call on this bill because I think it is important that people know where we are on this issue. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator Green, I heard a number of \$4-\$14 million. Where is that I don't see that?

SENATOR GREEN: That is in a revised...

SENATOR BARNES: I don't see that in your...

SENATOR GREEN: Well let me just tell you. I didn't know where it was either, but I read the calendar, which I do every so often. It said that Legislative Services had a revised fiscal note. I read the fiscal note and there it was. Lo and behold, a fiscal note I hadn't seen either. I am trying to find it and I still can't find it.

SENATOR BARNES: Is it on your amendment? Does your amendment cost us \$4-\$14 million? I guess that's my question.?

SENATOR GREEN: Well, the answer to the question is, yes, depending on how it gets implemented. I know right now as I stand here with you, okay, it is nothing to do with this moratorium or this bill, that we are raising about \$4 million a year from the Internet. Okay? My view of that was, if we had provided an opportunity to make up that lost revenue, that would help this bill because I think that there is a consensus in this state that people do not want the Internet taxed. I think that is what's going on. The answer to the question is we would lose a minimum, based on the numbers that I know, of about \$4 million in revenue.

SENATOR BARNES: And a maximum of \$14 million?

SENATOR GREEN: I don't know that number. It came out of the blue.

SENATOR BARNES: Okay, so you are sticking with the \$4 million. Thank you very much.

SENATOR GREEN: Yes I am. Thank you.

Recess.

Out of recess.

SENATOR BOYCE: Thank you, Mr. President. I just wanted to point out that, as I said earlier on Senate Bill 94, under the recent federal legislation, the grandfathering of our application to CST to the Internet will end, I believe, in two years. Therefore, we will lose this money at some point. What we are discussing today is do we lose it in this biennium or the next biennium. Since we are so far behind on funds this year, for this biennium, I personally think that we need to hold off on this and let the federal legislation take effect in two years. We will have to deal with the next budget, but at least in this budget, we can go as we are.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Just with reference to the amendment. We all know from our discussion this morning that we introduced the communications tax in 1990, and that by federal law we have been grandfathered as to the methodology by which we tax. That is going to disappear in two years. There will be a cost associated with that. Now one of the things that we are going to have to do is look very carefully at revenues. We have a projection on the table that when this happens, we will be losing about \$7 million a year. So \$14 million over the course of the biennium. I think we ought to consider this. We have been taxing, using a methodology that was acceptable because of the fact that we pre-dated the advent of the Internet and the federal government has grandfathered us. As articulated by Senator Boyce, that grandfathering disappears in two years. That is why our whole situation has to be looked at carefully. I think that we have to be careful about doing things piece-meal. It is in the future that we are going to have to make these adjustments. I think that we should do these adjustments in totality because they are going to be very important as we move forward. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. Senator D'Allesandro, I know that you are current with our revenue situation, at least as current as anybody can be. Could you just give us a briefing on where we are at this point?

SENATOR D'ALLESANDRO: With our total of general funds and specifically with certain accounts, our general funds are coming in at a fairly good rate, but we are pleased, our business taxes have come back. Our communications tax is not at 100 percent of projections so there is a problem. There has been a migration with regard to the tax, to certain lines, particularly those mobile phones that originate in different states, in other states. That is problematic. That problem is beginning to manifest itself as we move forward. As we look at those revenues, remember the changes are apparent. Those changes are on the horizon. On the other side, remember our back of the budget items which we were counting on for significant savings have not occurred. The \$20 million in savings from the health plan. That hasn't occurred. The creation of the liquor store in Nashua that was going to bring us \$7.5 million, has not occurred. So we do have a series of problems that we have to face. Some of these dreams have not become reality. They were not the legislative dreams. Thank you very much, Mr. President.

MOTION TO TABLE

Senator Larsen moved to have SB 116 laid on the table.

Adopted.

LAID ON THE TABLE

SB 116, relative to payment procedures for the utility property tax.

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua. Ways and Means Committee. Ought to pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you very much, Mr. President. Senate Bill 189 authorizes the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua. In government, there are many important tasks undertaken to provide for

the needs of our residents. One of the sometimes overlooked, but very important tasks, is to finance the capital expenditures required to develop the needed infrastructure to make our state, cities and towns a better place to live, learn and work. The process of issuing tax exempt bonds requires the highest level of expertise and professionalism to insure that any borrowings are done at the lowest possible cost since ultimately these costs, these costs of principal and interest are passed on to the taxpayers. When we hire finance officers in our cities, towns and counties, and our state treasurer, we hold them to the highest technical and professional standards. Today there are a number of ways for our finance professionals to lower the cost of borrowing, one of which is by using swaps and similar financial products. Since 1993, the state treasury has had the ability to use swaps because of a bill that is very similar to this one that was passed by the legislature. Since 1998, the city of Manchester has permitted the use of swaps to lower the cost of financing needed improvements to the Manchester airport. The market for swaps and similar products has matured significantly and now their use is widespread in the public financing marketplace by all levels of government throughout the country. In fact, because of their widespread use, the government Finance Office Association has established recommended practices for their use which have been in use since 1995 and recently updated to reflect the maturity of this market. Of course, the use of swaps is not without risk, but used properly, subject to prudent controls, they can reduce the cost of financing our important capital expenditures which ultimately leads to lower costs to our taxpayers. In our two largest cities we have a variety of important capital needs to finance. The passage of this bill will enable our professional finance officers to efficiently and cost effectively finance those capital needs at the lowest possible cost by adding swaps to the array of financing options for the benefit of our taxpayers. In 1998, I introduced a swap legislation piece that passed both the House and the Senate. That piece of legislation saved the city of Manchester \$5.5 million in interest payments. Therefore, I ask you support the committee's recommendation of ought to pass. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro, during your committee hearing, did the cities of Manchester and Nashua come in to testify for this?

SENATOR D'ALLESANDRO: I think, yes, we did hear testimony from Manchester and Nashua. They were very supportive of the bill. Actually they brought it to my attention.

SENATOR BARNES: Who came in representing the cities of Manchester and Nashua? Do you remember?

SENATOR D'ALLESANDRO: I think we had the Finance Officer from the city of Manchester.

SENATOR BARNES: What about Nashua?

SENATOR D'ALLESANDRO: I don't know if Mr. LaFlamme was there or not, but I believe he was.

SENATOR BARNES: Thank you very much, Senator.

SENATOR D'ALLESANDRO: If I might add, Mr. President. I did see Mr. LaFlamme this morning in Nashua and he was very upbeat about this bill and about its passage.

SENATOR MORSE: I am not against swaps in this creative financing. I think there is a lot to be done. I think our university system's probably already doing things like this, and I agree the State Treasurer is able to do this. However, the State Treasurer even has to submit whatever deal he puts together to Governor and Council. Having said that, I asked the committee if they would consider taking it back because there are three or four things in here that don't have oversight. "Upon the authorization by a vote of at least 2/3 of all members of the legislative body or the city, the finance officer or the treasurer". So which is it? And if it is 2/3 of the Treasurer, how's he split himself? I don't get it. "Notwithstanding any general or special law to the contrary, no swap agreement authorized by this act shall be included in the computation of any debt limitation imposed upon the city." So they're bypassing a cap of debt in the city. It's in the legislation. Further, these things do create money. So you're either going to create savings in the bond itself or you're going to create upfront cash. "Premiums on the sale of bonds or notes of the city, notwithstanding any general or special law to the contrary. Any premium received by the city may, in the discretion of the city finance officer or the treasurer, be applied to four different things." Probably the most concerning part is "deposited into the general fund of the city and available to be appropriated for any lawful purpose of the city." I just think the bill needs some oversight. I thought it was prudent to ask for it to go back to committee. In the long run, I said we don't have a dog in this fight because we don't live in Nashua or Manchester, but if Nashua or Manchester loses any money, because you are right, there is risk involved in this, even from the treasurer's notes there's risk. Who will ultimately be responsible? The city pledges and people will be asking us for money at the state level. I think it needs to be fixed before we pass it out of this body. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I thank Senator Morse for that and I am going to ask you to override the committee amendment and recommit the bill. I think there are two things that need to be entered into this bill. After talking to one, the State Treasurer, and also the city finance, the city of Manchester has about \$335 million of debt. I would hate to think that somebody could go out and decide that they could save the city an awful lot of money by doing swaps for \$335 million. There is risk. Orange County. The cute word is "swaps". The awful word is "derivatives". They are one in the same. Orange County went bankrupt using derivatives. It's been my contention right along from this legislation, even at the local level, I don't think we should be taking taxpayers' risks. The state is not at risk with their swaps because one, it was done at the Department of Transportation with toll money. The \$5 million that Senator D'Allesandro is talking about wasn't taxpayers' money; it was airport money. So it wasn't the city of Manchester's money. It was airport money. That is where the savings went. So again, I am going to ask this committee to override this ought to pass and recommit it so that we can put some caps in there for the number of swaps they can do in a given year, and the amount of debt that they can swap. I think that is important to protect the taxpayers. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I do have a dog in this fight and, as I read line 20, which was read to you by Senator Morse, I did read it the same way he did the first time through. But it says, "Upon authorization by a vote of at least two-thirds of all members of the legislative body of the city, the finance officer or the treasurer, as the

case may be, with the approval of the mayor on behalf of the city, may enter into an agreement." So what it says is first you get two-thirds of all the members, in our case, the board of aldermen, and then either the finance officer or the treasurer, plus the mayor have to sign up for this kind of an agreement. This is something that others cities, particularly Manchester, has benefited by. Nashua would like to be in a position to benefit by it. It is like all other obligations, a risk. Nashua is confident that it has the oversight to make sure that this kind of financing is properly in place. There is an investment policy in existence right now in the city of Nashua that governs how money is borrowed. My understanding is that the board has to be approached consistent with this proposal for approval. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I think that we have had a habit here of saying we love local control, but when we ask cities and towns to stand on their own two feet financially, we say well we really don't want you to do that because you're taking a risk. The city of Manchester is very able financially, to do this. Senator Gatsas is a member of the board of aldermen. He was there, I believe, when we did the last swap. I think he is incorrect when he said he saved the airport. Is the airport a separate entity from the world? Remember the airport bonds were guaranteed by the state. As a result of this ability to swap, the state guarantee was lifted. So the airport guarantees its own bonds. That's I think, good fiscal management. That is good fiscal responsibility, and it removed any obligation that the state had for those bonds. What our communities are asking for is with prudent financial management, governed by general laws put out by the federal government with regard to safety and soundness to make a decision as to how to save the taxpayers money. Now if that is fallacious, then I think we are all in trouble. I don't believe that we live in Orange County. Orange County is a great example of ineptitude. But there was chicanery and there was certainly many deviant activities in the Orange County process. But we have Senator Gatsas sitting right at the aldermanic chair. Do you think that any of those things are going to happen with Senator Gatsas there? I don't think so. I mean, he is right there. He is an alderman and he is a Senator. So it seems to me that if we can't trust the board of mayor and aldermen, the finance officer of the city of Manchester, and the mayor, then we're in trouble. And, let me reiterate, we always talk about local control. We want to give our cities and towns control of their destiny. This is an opportunity for the city of Manchester and the city of Nashua to save taxpayers money. And it is amazing because they both have huge capital projects underway now. Manchester has that huge \$100 million capital project with regard to the renovation and upgrading of our schools. Nashua did the same thing. They have a \$100 million project with regard to their schools. I think it makes sense. Let me read you something which I think is important because it says, "the use of derivative products is becoming more prevalent in state and local governments debt and risk managing programs. A derivative is a financial instrument created from and whose value depends upon, what its derivated from. The value of one or more separate aspects of the indexes of asset values. As used in public financing, derivatives may take the form of interest rate swaps, options on swaps, and other hedging mechanisms such as caps, floors, callers and rate locks. Derivative products can be an important interest rate management tool which, when used properly, can increase a government entity's financial flexibility, provide opportunities for interest rate savings, alter the pattern of debt service payments, create viable

rate exposure, and limit or hedge variable rate payments.” I mean that is what it’s all about. I think we as individuals, are moving into a new financial era. It is a new financial world. I remember when the best investment that we made in the retirement system in New Hampshire was in a second mortgage. Well, who is going to invest in second mortgages today for a retirement plan? I don’t think it is going to happen. So these are new financial instruments that are brought forward and are being used. I sat on the board of a \$50 billion bank. The assets of our bank were \$50 billion. That is a fairly large bank. What did we use? We used derivatives and we used hedges. We made money. We made enough money to pay our stockholders and we made enough money so that ten percent of the money we made went into affordable housing programs across the country, across our area of service. So I think that we have to accept the fact that we’re moving ahead financially and these new products are available. As these new products are available, we have to use them, and we have to use them prudentially. We have to be very, very careful, but we have to use them for the benefit of our constituents. When the city of Manchester requested this, it was for the benefit of the citizens of Manchester and the benefit of the citizens of Nashua. So I ask you to support the recommendation of the committee on ought to pass. Thank you, Mr. President.

SENATOR GATSAS: Thank you. Senator D’Allesandro, I certainly have great respect for my colleagues on the board. But wouldn’t you agree that we keep talking about savings, and that every deal isn’t a guaranteed savings? There is risk involved and there are communities in the country that are invested in swaps and have lost money. That money is taxpayers’ money. The bonding situations that we have currently in the city, would you believe, have no risk to the taxpayers? You’re right Senator, you were a director on a \$50 billion bank, but that was stockholders’ money you had at risk and not taxpayers’ money. Would you believe?

SENATOR D’ALLESANDRO: Would I believe? I believe. I believe. It’s believable. I am a true believer.

SENATOR GATSAS: So wouldn’t you believe that we should limit the risk by some sort of amount of the debt encumbered by those cities so that...and again, I have great respect, I can’t tell you about the treasurer in Nashua, but I have great respect for Kevin Clougherty. I think he is a very conservative individual. He does a great job as finance director in the city of Manchester. Fifteen years from now, Kevin Clougherty may not be there and somebody else may be, and we could be putting that credit risk to the city that he has worked so hard to get to the bond rating that we have. Would you believe that that risk could be available to somebody else that may not be as conservative as who we have there now?

SENATOR D’ALLESANDRO: Of course that is true. I would believe it. But, by the same token, you hire the person so the person that you hire to take Kevin’s place, you hope will be as good if not better than Kevin. I mean that is an extremely high standard, but let’s try to keep going at that high standard. It seems to me that we are trying to do the best that we can. That is all I can say. Thank you, Senator Gatsas.

SENATOR FOSTER: Thank you, Mr. President. I took speak in favor of the passage of the bill. I think that Senator Morse raised some legitimate concerns. I have spoken to people from the city that are here today. Our charter puts in a lot of the controls that Senator Morse has raised his concerns. I have asked to see those to convince myself that

they are indeed in place. But I am convinced that they are right now. I think that we ought to give the flexibility to our communities. As Senator Gottesman said, we are the ones who have a dog in this hunt. If I am not convinced after I take a look at things, I will certainly be the first to raise it with the House committee if I think there is any unintended risk or untoward risk of being there. But I have confidence in my community and the board of aldermen and the folks who work for the city, that they will be able to manage things in an appropriate way. So I would ask that this bill be passed. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Gatsas, I see this isn't an "FN" bill. If we table this, do you think this could come back to us with the concerns of Senator Morse and your concerns addressed in this bill or is it impossible to do that with this?

SENATOR GATSAS: I certainly would be willing to work with Senator D'Allesandro to come up with a compromise that would alleviate some of the risks to the taxpayers of both Nashua and Manchester.

MOTION TO TABLE

Senator Barnes moved to have SB 189 laid on the table.

A roll call was requested by Senator Foster.

Seconded by Senator D'Allesandro.

The following Senators voted Yes: Kenney, Boyce, Green, Roberge, Bradgon, Gatsas, Barnes, Morse.

The following Senators voted No: Gallus, Johnson, Burling, Flanders, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, Martel, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Motion failed.

The question is on the committee report of ought to pass.

SENATOR MARTEL: I am going to keep my comments to myself, Mr. President. This is a great day for the Irish today and I would hate to interfere with that greatness of the day. I will briefly say one thing. I voted against the tabling of this motion because I want this identified with key people who assured me that the balances are there. The checks and balances are in place to make sure that we protect the taxpayer at all cost. I looked at the bill itself after, for the third time and noticed what Senator Morse had brought up as issues. My good friend Chuck, did identify some key points. But there are also some areas there where there were some protections in place, like for instance, he was thinking about one third the treasurer, that included the board of aldermen, including the finance officer and also or the treasurer of the city. Nashua has a treasurer, so identified those. I just want to urge people to vote this bill ought to pass, Mr. President, and the rest I will keep to myself. Thank you.

SENATOR MORSE: I, too, support modern day financing tools and Senator, as the federal government debates medical savings accounts, I hope you support those too, being a modern day account. I have no problem with using these. I just don't think we have put in this legislation today what the House will probably put in when it gets over to them, and there needs to be some guidelines tightened up in here. Obviously you have the support for it today, but I think we should be passing it with those guidelines over here before we pass it over to the House. Thank you.

A roll call was requested by Senator Gatsas.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Flanders, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, Martel, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Boyce, Green, Roberge, Bradgon, Gatsas, Barnes, Morse.

Yeas: 17 - Nays: 7

Adopted.

Ordered to third reading.

SB 202, relative to property taxable as utility property. Ways and Means Committee. Ought to pass, Vote 4-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 202 ought to pass. Senate Bill 202 makes a technical correction in those instances where property changes in character from property that is in the local tax base to property that is in the state utility property tax base. Senate Bill 324 of the 2004 session was passed to accomplish the same goal of Senate Bill 202; however, it was later determined that the wording of the bill did not pertain to all properties affected. Senate Bill 202 was prepared to address this situation. The committee recommends ought to pass on Senate Bill 202. Thank you, Mr. President.

SENATOR GATSAS: Thank you. Senator D'Allesandro, I find it of great interest on line one, the statewide enhanced education tax, better known as the SWEET tax that was part of 608, and is that still in law?

SENATOR D'ALLESANDRO: Is it still in law? The statewide...isn't this for determining what the tax is?

SENATOR GATSAS: My only question is, Senator, that I have a great passion for those four words because they were four words that were part of the Senate Bill 608 for education funding which was called the SWEET tax. Now, my best recollection is that SWEET tax was eliminated with Senate Bill 302. So I don't know if it still exists or it doesn't exist.

SENATOR D'ALLESANDRO: That language currently does exist in law. It should be RSA 78:8, I, a. It is in the law.

SENATOR GATSAS: Well it's good to know that some part of 608 still lives, because who knows if it doesn't come back to life?

SENATOR D'ALLESANDRO: We have a SWEET tax.

Adopted.

Ordered to third reading.

SB 212, relative to the railroad tax. Ways and Means Committee. Ought to pass, Vote 4-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you very much, Mr. President. Good news. No poles. No wires. No derivatives. I move Senate Bill 212 ought to pass which will make the railroad tax act more like a property tax. The bill is helpful because both state officials and railroad officials are familiar with the property tax and the property tax appeals process. The committee recommends ought to pass on Senate Bill 212. Thank you, Mr. President.

SENATOR FULLER CLARK: Senator Gallus, I would just like to be educated and could you tell me where the revenues from the railroad tax go?

SENATOR GALLUS: That I don't actually have the answer. I think...isn't that part of the general fund? Where is this money going? I am sorry. I can't answer that question.

SENATOR FULLER CLARK: Maybe we both can be educated then if there is someone else who could answer that question.

SENATOR GALLUS: I would defer to anybody. What this actually does is allow, if there is an appeal, for them to appeal directly to the director or the commissioner of Department of Revenue Administration on the basis for the assessment. Okay? Where the tax actually goes, I am not totally sure. Maybe the chairman can enlighten us.

SENATOR FLANDERS: I just want to assure Senator Gallus that it doesn't go to the north country.

SENATOR GALLUS: I know it doesn't.

SENATOR FLANDERS: Thank you, Mr. President. I checked with the chairman of Ways and Means and it goes into the railroad fund of which I tried to get money out of last year and it didn't work very well.

SENATOR FULLER CLARK: And the money that goes into the railroad fund, what is that used for?

SENATOR FLANDERS: Railroads. I am sorry. They use it for repairs. In fact, last year they had all of these railroad ties that they have been saving and there was hazardous waste on them, and they used \$80-\$90,000 to dispose of those properly and they do some track repair. It all goes back into railroads.

Adopted.

Ordered to third reading.

SB 217-FN, relative to the use of lottery revenue as purses for horse and dog racing. Ways and Means Committee. Inexpedient to legislate, Vote 3-2. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 217 inexpedient to legislate. The bill would effectively eliminate, terminate the sweepstake races at dog and horse tracks around the state and end a promotional partnership that dates back to 1964 when the first sweepstake race was run at Rockingham Park. Not only are the funds necessary to promote these races around the country, but in the view of the looming fiscal challenges, the committee believes the lottery revenue generated at the tracks, as well as the tourist dollars that the sweeps races generate and the jobs the races create, are important to our state and important to our communities, and the committee recommends inexpedient to legislate. Mr. President, I will say that in 1963, the policy was adopted whereby the sweepstakes race would be enhanced with a significant purse. That purse became the first sweepstakes race. That race was nationally televised on ABC television, the Wide World of Sports and New Hampshire gained national recognition as being the first state in the United States to renew the sweepstakes. Sweepstakes had been outlawed in 1894, we reinstituted them. We have a number of employees at these venues. The sweepstakes enhancement takes care of the tracks, plus the Rochester Fair. I think it is a wonderful attraction. It promotes tourism. It promotes people venturing to the tracks. What

it does is it brings the better quality animals to race. It has been a very successful program for New Hampshire. It's been good for the racetracks. **TAPE CHANGE** If that is what people want, then that is what they should do. What they shouldn't do is destroy a tradition that has been very good for the people of the state of New Hampshire. If we want to do that, then we ought to do that. I think that is something that has been tried in other states and certainly it might have been successful in some venues and unsuccessful in other venues. But I think we ought to do what we intend to do. If we intend to keep people working at these facilities, good jobs, fairly decent salaries, we ought to do what we can to enhance it. We have been doing it since 1963 and I don't see any reason why we should stop doing it today. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Senator D'Allesandro, I guess I am the most ignorant person here in this chamber because over the years people have asked me about the lottery. This is where this money comes from, correct?

SENATOR D'ALLESANDRO: That is correct.

SENATOR BARNES: Constituents have asked me about the lottery. A few years ago I went over to the lottery headquarters and I asked them, "Does all this money in the lottery go to education?" And you know, I was told by the then commissioner, director, that yes, it does, Senator. The only thing that doesn't is the price of advertising and the tickets and that thing, but everything else goes. So all these years, until all of a sudden I heard you speak, I believed, and my neighbors have believed, I think, that all the money in there goes to the education of our people, of our students. I had no idea that that lottery money, some of that lottery money went to the race tracks.

SENATOR D'ALLESANDRO: Well, I think you can still be a believer, because the money that is given to the racetracks is for promotion. To promote the lottery because they sell lottery tickets at the racetracks. This is part of that money that is spent on advertising. It is a legitimate expense and it has produced increases in terms of the amount of money that the lottery has brought in. So, if you're going to use the best methodology for advertising the lottery so that you can increase sales, it's a pretty good time to do it, it is a pretty good place to do it. You can still be a believer that all the money goes into...all the money earned goes into education.

SENATOR BARNES: Would you believe I think that is one heck of a stretch? Thank you.

SENATOR D'ALLESANDRO: I guess, Senator Barnes, I believe anything you say.

SENATOR MARTEL: Thank you, Mr. President. I also urge my fellow colleagues to find this bill inexpedient to legislate. Those in opposition to this motion and to this bill are very, very well-intended people. But it would cause much more harm to this fragile New Hampshire racing industry that we actually need to help to make sure that we can maintain racing in this state at all levels. In order to be able to get better classes of horses or dogs. Dogs who chase the syndicate for higher purses around the country. It is a business of money. And these people are attracted by higher purses. Now we may be utilizing some of these monies to increase purses at the racetrack, which we are doing, but that is to entice people to come and bring their product to the state of New Hampshire to race

on our tracks, in order to attract more people to the tracks. Now, there are all kinds of exotic betting today that cause people to come to one facility and be able to bet, through parimutuel betting to three or four or maybe five or six different tracks around the country. That is done from one location. The reason, the one plan that was in place, even try to have you do that from your home, your couch at your home. So, the attendance records may not reflect that the industry may seem to be healthy, but that is not exactly true. These folks certainly are betting, maybe not part of the take that the track has every day, but they are still betting. Not only that, but when you walk through the lobby let's say at Rockingham Park or the dog track, you see a counter as you walk up there and what do you see? They are selling lottery tickets. Those lottery tickets are acquiring more dollars to the state, in the millions. So again, that is a source of revenue that the state is enjoying. That could be lost if we don't keep this industry, which is...and I agree, it's in trouble right now. But if we continue to improve it, it would become healthy probably once again. I wouldn't think to the heyday of once racing was 50 years ago, but at least a healthy plane which would help the industry as a whole, the state of New Hampshire and the tracks themselves. Some of these funds would help utilize, you know, for school education funding as well. So, Mr. President, I urge that we continue this inexpedient to legislate motion and help an industry, and that we also assist them in becoming healthier for the state and for us, and our children, and for everybody who lives here. Thank you very much, Mr. President.

SENATOR ROBERGE: Thank you, Mr. President. I rise in opposition to the inexpedient to legislate motion. I have served in the New Hampshire Senate for 21 years. During that time, I have fought hard to eliminate wasteful spending. As a state, we have a proud tradition of responsible spending, low taxes and ensuring fair practices. In 1990, voters approved of a constitutional amendment requiring all lottery profits be used to fund public education. Proponents of these subsidies argue that they are a good investment for the state and they generate state revenue. The claim couldn't be more far from the truth. According to Parimutuel commission records, these subsidies do not increase racetrack attendance, nor do they generate racetrack tax revenue. In fact, in 2003, the state received less than \$6,000 in tax revenue from these subsidized races. At the same time, the state paid out \$325,000. Senate Bill 212 is about putting money back into our schools where it belongs. Please vote with me in voting no on the inexpedient to legislate. I will offer an amendment at that point. What I am offering to do is the amendment would reduce the subsidies to \$25,000 for Rockingham and \$25,000 for Seabrook, \$25,000 for Hinsdale, \$15,000 for Lakes Region and \$15,000 for the Rochester Fair, thusly returning \$220,000 of much needed revenue to the education trust fund. This is my first small effort to reduce the deficit. Please join me and help me try to take a first step in saving us some money. I believe this is the right way to go. Thank you.

PARLIAMENTARY INQUIRY

SENATOR BARNES: Thank you, Mr. President. Just a parliamentary question. If we want to have discussion on Senator Roberge's amendment that she just discussed briefly, do we have to vote down this inexpedient to legislate?

SENATOR EATON (In the Chair): Yes, we would.

SENATOR BARNES: Thank you, Mr. President.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Roberge.

Seconded by Senator Green.

The following Senators voted Yes: Johnson, Kenney, Flanders, Odell, Eaton, Bragdon, Foster, Clegg, Martel, Letourneau, D'Allesandro, Morse, Hassan.

The following Senators voted No: Gallus, Boyce, Burling, Green, Roberge, Gottesman, Larsen, Gatsas, Barnes, Estabrook, Fuller Clark.

Yeas: 13 - Nays: 11

Committee report of inexpedient to legislate is adopted.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 11-FN, extending the local property tax exemption for wooden poles and conduits.

SB 13, relative to placement and removal of political advertising.

SB 19, relative to qualifications to sell lottery, bingo, and lucky 7 tickets.

SB 46, relative to the duties of law enforcement officials upon receiving reports of missing adults.

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act.

SB 102-FN, limiting liability for failure to arrest persons under 21 years of age illegally transporting alcoholic beverages.

SB 106-FN, making unauthorized recording in a motion picture theater a crime.

SB 111, relative to persons conducting securities broker-dealer and investment advisor businesses.

SB 120, relative to the purchase of rail properties.

SB 127-FN, relative to the regional community-technical college system's acquisition of the building currently leased from the Pease development authority.

SB 148, relative to motorcycle inspections and relative to electronic inspection information.

SB 156-FN, relative to criminal trespass.

SB 157-FN, relative to all terrain vehicles used for agricultural purposes.

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds.

SB 173, relative to exceptions to licensure for electricians.

SB 175, requiring insurance coverage for certified midwives.

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item.

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act.

SB 188, relative to the construction of buildings on properties without street frontage.

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua.

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

SB 202, relative to property taxable as utility property.

SB 208-FN, relative to certification of driver education instructors.

SB 212, relative to the railroad tax.

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21).

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 33, relative to the study of state retainage practices.

HB 40, relative to inspection dates for certain vehicles.

HB 42, establishing a statutory joint committee to review and propose changes to state unclassified officers' salaries.

HB 47, regulating the use of computer spyware.

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor.

HB 74, relative to the sale of permissible fireworks.

HB 82, relative to political committees of political parties.

HB 84, relative to compensation of county convention members for county business.

HB 87, relative to the authority of the Carroll county public water system.

HB 95, relative to delegates to state party conventions.

HB 97, relative to replacing school budget committee members.

HB 99, changing the name of the college for lifelong learning to Granite state college.

HB 102-FN-A, increasing the personal needs allowance of nursing home residents and certain other residents and making an appropriation therefor.

HB 107, relative to the use of artificial light to view moose in Coos County.

HB 112, relative to psychiatric evaluations in competency hearings.

HB 124, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway.

HB 128-FN, relative to negligent operation of a carnival or amusement ride.

HB 144-L, relative to special elections for municipal charter amendments.

HB 150, defining truancy.

HB 154, relative to changes of party registration on primary day.

HB 171, relative to nicknames on ballots.

HB 173, relative to food service and distribution.

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers.

HB 181, establishing a committee to study the special account in the New Hampshire retirement system.

HB 185, establishing a committee to study maximizing the incentives for the voluntary use of renewable energy in New Hampshire as defined in RSA 374-F:3.

HB 199, relative to fish and game department expenditures for marine fisheries.

HB 206, relative to alcohol education and abuse prevention and treatment programs.

HB 229, extending the committee to study the establishment of a farm viability program.

HB 236, relative to the time for filing a motion to rehear a zoning decision.

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics.

HB 263, relative to the use of design build and construction management methods for state capital projects.

HB 277, relative to special elections for executive councilor, state senator, and state representative.

HB 286, prohibiting the operation of pocket bikes and motorized scooters upon ways.

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire.

HB 303-FN, relative to the fire standards and training commission.

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education.

HB 339, relative to electioneering at polling places.

HB 340, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg.

HB 353, relative to consent to haul lobster and crab gear of license holders.

HB 414, relative to regulation of municipal waste combustors.

HB 434-FN, requiring state agencies using automated answering systems to provide a method of access to a human being.

HB 448-FN, relative to the collection of certain fees by the postsecondary education commission.

HB 462, prohibiting road toll refunds for idling time.

HB 483, relative to instructions to be placed on the general election ballot.

HB 488, establishing a task force on mental health costs.

HB 512, establishing a commission to study property tax relief and reverse mortgages.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 33 - 512, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 33, relative to the study of state retainage practices. (Transportation and Interstate Cooperation)

HB 40, relative to inspection dates for certain vehicles. (Transportation and Interstate Cooperation)

HB 42, establishing a statutory joint committee to review and propose changes to state unclassified officers' salaries. (Banks and Insurance)

HB 47, regulating the use of computer spyware. (Internal Affairs)

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program. (Environment and Wildlife)

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor. (Finance)

HB 74, relative to the sale of permissible fireworks. (Public and Municipal Affairs)

HB 82, relative to political committees of political parties. (Internal Affairs)

HB 84, relative to compensation of county convention members for county business. (Public and Municipal Affairs)

HB 87, relative to the authority of the Carroll county public water system. (Public and Municipal Affairs)

HB 95, relative to delegates to state party conventions. (Internal Affairs)

HB 97, relative to replacing school budget committee members. (Education)

HB 99, changing the name of the college for lifelong learning to Granite state college. (Capital Budget)

HB 102-FN-A, increasing the personal needs allowance of nursing home residents and certain other residents and making an appropriation therefor. (Finance)

HB 107, relative to the use of artificial light to view moose in Coos County. (Environment and Wildlife)

HB 112, relative to psychiatric evaluations in competency hearings. (Judiciary)

HB 124, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway. (Transportation and Interstate Cooperation)

HB 128-FN, relative to negligent operation of a carnival or amusement ride. (Transportation and Interstate Cooperation)

HB 144-L, relative to special elections for municipal charter amendments. (Internal Affairs)

HB 150, defining truancy. (Education)

HB 154, relative to changes of party registration on primary day. (Internal Affairs)

HB 171, relative to nicknames on ballots. (Internal Affairs)

HB 173, relative to food service and distribution. (Health and Human Services)

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers. (Energy and Economic Development)

HB 181, establishing a committee to study the special account in the New Hampshire retirement system. (Banks and Insurance)

HB 185, establishing a committee to study maximizing the incentives for the voluntary use of renewable energy in New Hampshire as defined in RSA 374-F:3. (Energy and Economic Development)

HB 199, relative to fish and game department expenditures for marine fisheries. (Environment and Wildlife)

HB 206, relative to alcohol education and abuse prevention and treatment programs. (Health and Human Services)

HB 229, extending the committee to study the establishment of a farm viability program. (Environment and Wildlife)

HB 236, relative to the time for filing a motion to rehear a zoning decision. (Public and Municipal Affairs)

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics. (Public and Municipal Affairs)

HB 263, relative to the use of design build and construction management methods for state capital projects. (Transportation and Interstate Cooperation)

HB 277, relative to special elections for executive councilor, state senator, and state representative. (Internal Affairs)

HB 286, prohibiting the operation of pocket bikes and motorized scooters upon ways. (Transportation and Interstate Cooperation)

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire. (Energy and Economic Development)

HB 303-FN, relative to the fire standards and training commission. (Executive Departments and Administration)

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education. (Education)

HB 339, relative to electioneering at polling places. (Internal Affairs)

HB 340, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg. (Environment and Wildlife)

HB 353, relative to consent to haul lobster and crab gear of license holders. (Environment and Wildlife)

HB 414, relative to regulation of municipal waste combustors. (Energy and Economic Development)

HB 434-FN, requiring state agencies using automated answering systems to provide a method of access to a human being. (Executive Departments and Administration)

HB 448-FN, relative to the collection of certain fees by the postsecondary education commission. (Education)

HB 462, prohibiting road toll refunds for idling time. (Ways and Means)

HB 483, relative to instructions to be placed on the general election ballot. (Internal Affairs)

HB 488, establishing a task force on mental health costs. (Health and Human Services)

HB 512, establishing a commission to study property tax relief and reverse mortgages. (Banks and Insurance)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

March 24, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good morning! Senator Barnes let me know that the state lost an important and faithful public servant in the death of Richard "Doc" Hill over the weekend or during the week. Senator Barnes will say a little more about him in a minute, but in honor of him, I offer you these thoughts: Ever since receiving the email from Mark, suggesting, as a matter of fact, what to wear for the picture and I hope I did alright today, I have been thinking about how meaningful and important it is to feel included. So, first of all, thank you for including me in your picture. But, after all, there is nothing worse than feeling sidelined or shunned or out of relationship with one of your friends or by your party or by your community. And, as a matter of fact, when you're not included, you can't contribute anything. And besides that, think about how distorted this morning's photograph would have been if it only had included the men, for instance, or just the women, or only members of one party or the other. It may have been a little bit more comfortable for some, but definitely not very real. It seems to me that part of your work, both Senate and staff members and even lobbyists is to stop and think from time to time very hard about how effective your efforts and your decisions are at including as many of us as possible. It's hard work, but is it not true that the picture will be accurate if we don't figure out how to do that. So, we better pray:

Great and patient photographer of our destiny, draw us in, line us up, make us smile – and then, when You are ready, craft from the amazing tableau of who we are, a picture that is complete and worth framing and hanging on our wall. Amen

Senator Bragdon led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR BARNES (RULE #44): Thank you, Mr. President. I want to thank Reverend Jones for saying a few words and a prayer for Doc Hill. There aren't too many of you in this chamber that probably remember Doc Hill. I know Carl Johnson does. I don't know if Lou D'Allesandro served with him. Senator Estabrook did. I know Sheila Roberge did and Martha Fuller Clark did, and my friend in front of me, Peter Burling, Senator Burling did. Doc Hill was an interesting person. Doc and I got kind of friendly I guess, because most of the time we voted the same way, although not all the time. I was with him in the House at one time. But something that we had going with us was an American sport called baseball. Four years ago when there was a Senate campaign going on up in the north country, and there was a man by the name of Gallus mentioned, I had not idea what Gallus was. So I called Doc Hill and I said, "What about this guy Gallus"? He said, "Well, his damn sign is in my front yard." And I said, "Okay, Doc, that's good enough for me." So you lost a good yard sign guy up there. Doc Hill used to delight in public coming up to me and sticking this in my pocket. He had many of these. It is a fountain pen. And the pen says, "Good luck from a New York Yankees fan Doc Hill, Littleton." After Doc left this chamber, the chamber across the way from us, I always knew when he had come to Concord

and it was often, because there would always be a box score or a bad story on my Red Sox sitting on my desk. He would drive me crazy. We'd meet out in the crosswalk, and I would try to get him run over sometimes, hold him you know, in front of the cars. We gave him a resolution on the House floor. I wasn't in the House at the time, but a couple of Representatives from Raymond presented it. The Speaker brought him down and it was read to him and it was kind of interesting. I want you to know that he is the only Yankee fan that I have ever formed a friendship with. He gave me, during our conversations, a Yankee hat. I always threatened to burn it on the steps of the State House whenever I saw him. I went looking for it today, this morning and I couldn't find it. I think I probably burned it after the World Series of this past year. I wanted to wear that in respect. So I just want to say that he was a good man. He did a lot of good things for the state of New Hampshire, and I am going to miss him this year. I look forward to meeting up with him sometime and letting him know that the Red Sox repeated in 2005. Thank you so much for listening.

SENATOR BURLING: I don't know whether Senator Gallus had something he wanted to say on this subject. I will reserve my comments for later.

SENATOR GALLUS (RULE #44): Thank you, Mr. President. I just want to add a few words. I really loved Doc Hill. He was a real gentleman. I first met Doc Hill, when he sat me down for a couple of hours in his living room when I first chose to run for the state Senate. He asked me about two hours worth of questions, decided that I was a suitable candidate and basically allowed me to put my sign on his front lawn. Since that time, every opportunity that I've had when I've been in Littleton, I've stopped and had coffee with Barb and Doc Hill. He's called me occasionally. Every occasion I have stopped in Littleton to visit with Doc, he has mentioned, "Make sure you tell Jack Barnes those Red Sox don't have a chance." But the true gentleman that Doc was, when the Red Sox and Jack Barnes personally won the World Series last year, Doc said, "You know that Red Sox win was really good for baseball." He was a true gentleman and I will miss Doc. Thank you.

SENATOR BURLING (RULE #44): Thank you, Mr. President. I, too, among that class who learned so much from Doc Hill. I learned not only politics but veterinary science. That was good because we had some horses that needed his attention. I rise for a different purpose. I don't know how many of you feel this way, but every time I turn on the news, Mr. President, I see angry citizens, angry politicians, angry confrontation about almost every issue that affects our lives. I wanted to report that last night I went up to Lebanon City Hall and I sat in a room with about 80 of our fellow citizens and Charles Bass, our Congressman. I mention it because some miraculous happened in that room last night. A group of people who had widely differing views, intensely held feelings, had a political conversation that never varied from the polite and respectful. It was so extraordinary to watch it and be part of it, that I thought it was worth mentioning. I am so proud of the citizens of this state. When I think about the discussions that go on concerning our place in the primary cycle, and I see things that happen as they happened last night, I am reminded that, you know, our voters and our citizens really do put themselves out front and they do an exceptional job. I just want to mention a constituent of Senator Larsen's. Her name is Doctor Sarah Henry and she stood up last night to talk about her concerns with

Congressman Bass's vote on the Schiavo matter. As she spoke, I realized I was hearing somebody speak with such clarity, such definition, and such passion of heart, that it was going to affect the way I thought about that issue. They said that when Lincoln finished the Gettysburg address, everybody in the audience was stunned even though most of the audience couldn't hear him, his voice was so quiet. That's what happened last night. I just wanted to rise and say that there are people in this world who can differ in opinion and do so with respect, kindness and politeness. That sure brightened my day.

SENATOR BARNES (RULE #42): Thank you, Mr. President. Last week after the session, I filed a request for a reconsideration on SB 148. I did that because I had some concerns for that piece of legislation. I was told that there would be meetings held on the matter to try to come up with some situations that would make it better for our citizens out there and for the little guys and gals. Senator Morse assured me that was going to happen. Well, it did happen. That's why I am withdrawing my request for reconsideration on SB 148 and I would like to read just a little bit of what I think came out of that meeting, which is good for our constituents. "Based on legislation pending in the House and Senate, the Department of Safety and the Gordon Darby Company are discussing ways to modify the state emissions testing program to make it easier for service stations to implement and make it more consumer friendly. We expect that the revised program will continue the implementation of the state's emissions testing program so that we maintain EPA compliance and do not lose federal highway funds. Make the program advisory only for the first year. Vehicles will be tested, but they will not fail the safety inspection if they fail the emission test. This will enable both service stations and consumers to become familiar with the new emissions testing program. Exempt non OBD II equipped vehicles from the OBD II emissions testing program gives small inspection stations, those doing less than 200 inspections a year, three options for reporting inspection emissions results. Existing manual reporting. Number 2, implement new electronic reporting. Number 3, implement new web based reporting. Small stations that have already signed up for the electronic reporting system will be allowed to return this system without penalty. Provide the maximum EPA waivers for consumers. Require notification of emissions testing failure when selling a vehicle." Now, I want to thank the Senate President and those others who sat in. I understand there was a group of Senators, both Republicans and Democrats that sat in on these meetings and I want to thank all of you for helping putting together what I think is something that is going to be much more palatable for all of our constituents. Having said that, I understand today that there are certain folks working with the Department of Safety to get something, a press release, into the newspapers, letting the people know about this and about what's going on, and hopefully they get some spots on public television somewhere to also clarify this and let the citizens know what is going on. I think the telephones are going to ring pretty loudly on April 1, once the first constituent goes in to get inspected. I think they've got to know what's coming on and here again, I congratulate the folks that worked on this and I thank you very much. You put it to rest. I am very happy now that I voted for that bill. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. As the prime sponsor of this particular piece of legislation and House Transportation Chairman, I want to thank all of those people who have come together and recognize these individuals who spent many hours on this issue. With-

out their cooperation, these folks, with this difficult issue that has been before us, we wouldn't have been able to accomplish these goals. First of all, I would like to thank you, Mr. President and your staff, Rick, Jay and Amy for sitting in on many hours of conversations. Senators Morse, Flanders and Burling for attending these meetings. Representative Packard and Nedeau of House Transportation. Assistant Commissioner Earl Sweeney, Director Virginia Beecher, Jay Gordon of Gordon Darby Corporation and his representatives. While this may not be a perfect solution to a difficult situation, as we know, it never is perfect. This is a reasonable outcome and good progress has been made on this issue. We'll be watching it closely over the next year and see what comes up. I want to thank all of my colleagues here in the Senate for having patience with me on this and your cooperation. Thank you.

SENATOR EATON (In the Chair): And just so the press does know, there is no formal announcement on that yet. I know that you are printing what's being told here, but we hope to be together with Safety to have joint remarks on this, next week some time.

COMMITTEE REPORTS

SB 6-FN, relative to small group insurers. Banks and Insurance Committee. Inexpedient to legislate, Vote 4-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 6 inexpedient to legislate. The committee had two bills that addressed how to fix some of the problems with Senate Bill 110, SB 6 and SB 125. SB 6 keeps health status as a rating factor and SB 125 does not. The majority of the committee felt that Senate Bill 125 was the better approach. Therefore, we ask your support on the motion of inexpedient to legislate and the committee thanks you.

Committee report of inexpedient to legislate is adopted.

SB 64, establishing a committee to study small group health insurance plans. Banks and Insurance Committee. Ought to pass, Vote 4-2. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move Senate Bill 64 ought to pass. Senate Bill 64 would establish a study committee that would focus on studying what group size would work best for New Hampshire. The study committee would have to report out by November 1, 2005. The Banks and Insurance Committee asks for your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 67, eliminating health status as a rating factor for small group health insurance. Banks and Insurance Committee. Inexpedient to legislate, Vote 4-2. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 67 inexpedient to legislate. Senate Bill 67 would eliminate health status as a rating factor. That is something I support. I was a co-sponsor of the bill, but along with the prime sponsor of the bill, we feel that Senate Bill 125 addresses the issue of health status in a way that works for the betterment of health insurance generally. For this reason, the majority of the committee asks your support on the motion of inexpedient to legislate.

MOTION TO TABLE

Senator D'Allesandro moved to have SB 67 laid on the table.

Motion failed.

The question is on the committee report of inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SB 69-L, relative to certain insurance liens. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Barnes for the committee.

Banks and Insurance

March 15, 2005

2005-0640s

01/05

Amendment to SB 69-LOCAL

Amend RSA 155-B:2-a as inserted by section 1 of the bill by replacing it with the following:

155-B:2-a Municipal Lien on Owner's Interest in Property Insurance Proceeds. A municipality may assert a lien on a real property owner's interest in any property insurance proceeds that are payable as a result of the damage or destruction of that property owner's real property located in the municipality. The municipal lien shall be subordinate to any lienholder of record, and to any right, title, or interest in such property insurance proceeds in favor of any lender holding a mortgage on such real property and who was named as an additional insured or loss payee, by means of loss payable endorsement or otherwise, on any policy of insurance insuring such real property. The insurer's obligations under this section shall commence upon its receipt of actual written notice from the municipality, a copy of which shall be sent by the municipality to the insured, and shall apply only to insurance proceeds held by the insurer as of that date and due to be paid to the owner. The lien shall be for the purpose of reimbursing the municipality for all costs permitted to be recovered by it under this chapter if the municipality elects to demolish and cleanup the property. The property owner shall, within 72 hours of the receipt of a written request by the municipality, provide the municipality with the names, addresses, agents, and policy numbers of all insurance companies which have provided the property owner with insurance on the property. The lien shall automatically expire if the owner rebuilds or demolishes the real property in the manner required by this chapter.

2005-0640s

AMENDED ANALYSIS

This bill allows municipalities to place a lien on any insurance proceeds received by a mortgagee if the mortgagee's building is damaged and the mortgagee does not rebuild or demolish the building.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 69 ought to pass with amendment. This bill would allow municipalities to place a lien on insurance proceeds on any property that has been damaged by fire and the mortgagee has not rebuilt or demolished it. The amendment clarifies that the municipal lien shall be subordinate to any lienholder of record. It also clarifies that within 72 hours from the receipt of a written request from the municipality, the property owner shall provide them with any names, addresses, and policy numbers of all

insurance companies that have provided insurance on the property. The committee hopes that this will help the municipality to save money on rebuilding these properties. Subsequent to the committee's vote on Senate Bill 69, there have been some concerns raised regarding the rights of private property owners. It is my understanding these issues will be dealt with in the House. The Committee would ask for your vote on the recommendation on Senate Bill 69. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 112-FN, relative to viatical settlements. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-2. Senator Barnes for the committee.

Banks and Insurance

March 15, 2005

2005-0641s

01/05

Amendment to SB 112-FN

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study viatical settlements.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study viatical settlements between a life insurance provider and a policy owner.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study viatical settlements between a life insurance provider and a policy owner.

4 Chairperson; First Meeting. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

2005-0641s

AMENDED ANALYSIS

This bill establishes a committee to study viatical settlements between a life insurance provider and a policy owner.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 112 ought to pass with amendment. Senate Bill 112 as amended would establish a study committee to study viatical settlements. There were some unclear issues that the committee felt needed to be studied before moving this issue forward. The committee hopes that the questions and concerns can be addressed through the study committee and a solution brought before this body next year. The Banks and Insurance Committee asks your support for the motion of ought to pass with amendment. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. My understanding was there was a further amendment that was coming on that bill. Would that be taken up afterward?

SENATOR EATON (In the Chair): We have to take up the committee amendment first, and if there is, that would come along.

SENATOR GOTTESMAN: Thank you.

Amendment adopted.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

March 23, 2005

2005-0904s

01/10

Floor Amendment to SB 112-FN

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study viatical and life settlements.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study viatical and life settlements.

2005-0904s

AMENDED ANALYSIS

This bill establishes a committee to study viatical and life settlements.

SENATOR BARNES: I have an amendment that is being proposed by Senator Flanders. I am going to pass these on to Senator Flanders so he can discuss it.

SENATOR FLANDERS: Thank you, Senator. There was an error made and was found, and this just changes the committee established, and this will establish a committee to study. It is a correction and it doesn't change any of the original bill. It is just a correction. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 118-FN, repealing certain provisions of law regarding small group health insurance. Banks and Insurance Committee. Inexpedient to legislate, Vote 6-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 118 inexpedient to legislate. Senate Bill 118 would repeal and revise Senate Bill 110. In light of the amendment of Senate Bill 125, it

appears that Senate Bill 118 is no longer necessary, and it is unnecessary to proceed at this time. The Banks and Insurance Committee asks your support for the motion of inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 125-FN, relative to small group health insurance and relative to reinsurance. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-2. Senator Gottesman for the committee.

Banks and Insurance

March 22, 2005

2005-0840s

01/09

Amendment to SB 125-FN

Amend the title of the bill by replacing it with the following:

AN ACT repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

Amend the bill by replacing all after the enacting clause with the following:

1 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Base rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans which the carrier writes and maintains in the nongroup individual health insurance market.

I-b. "Case characteristics" means the following characteristics of a small employer: age, size of group, and industry classification, as determined by a small employer health carrier, that are considered by the small employer health carrier in the determination of premium rates for the small employer. Claim experience, health status, geographic location, and duration of coverage since issue shall not be case characteristics.

2 Definition Added. Amend RSA 420-G:2 by inserting after paragraph XVI the following new paragraph:

XVI-a. "Standard health care plan" means the plan of reinsurance that may be modified as necessary by the board, established in RSA 420-G:6, III, with the approval of the commissioner.

3 Definition; "Health Coverage Plan Rate." Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the base rate through the application of factors that reflect actuarially demonstrated differences in expected utilization or cost attributable to differences in the coverage design and/or the provider contracts that support the coverage. ***Any health cover-***

age plan rate change shall be based on a small employer health carrier's annual cost and utilization trends or changes in the equivalent value of benefits and such change shall not be more frequent than every 12 months.

4 Small Group Health Insurance; Premium Rates. Amend RSA 420-G:4; I(b) to read as follows:

(b) Base rate shall be established by each health carrier for all of its health coverages offered to individuals and ~~[, separately,]~~ for all of its health coverages offered to small employers.

5 Small Group Health Insurance; Premium Rates. Amend RSA 420-G:4, I(e) and (f) to read as follows:

(e) In establishing the premium charged, health carriers ~~[providing]~~ ***issuing*** coverage to small employers ***on or after July 1, 2005*** shall calculate a rate that is derived from the health coverage plan rate ~~[through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location, and health status]~~ ***by making adjustments to reflect one or more case characteristics. Claim experience, health status, geographic location, and duration of coverage since issue are not case characteristics.*** Such ~~[factors]~~ ***adjustments from the health coverage plan rate*** may be ~~[utilized]~~ ***made*** only in accordance with the following limitations:

(1) Carriers may use the attained age of covered persons as a ~~[rating factor]~~ ***case characteristic***. However, the maximum premium differential for age as determined by ratio shall be ~~[4]~~ ***3*** to 1 beginning with age 19.

(2) Carriers modifying such average premium for age may do so only by using the following age brackets:

0 - 18
19 - 24
25 - 29
30 - 34
35 - 39
40 - 44
45 - 49
50 - 54
55 - 59
60 - 64
65 +

(3) Carriers may use group size as a ~~[rating factor]~~ ***case characteristic***. However, the highest factor based on group size shall not exceed the lowest factor based on group size by ~~[more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor]~~ ***a ratio of greater than 1.25 to 1.0.***

(4) Carriers may use the small employer group's industry classification as a rating-factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than ~~[20]~~ ***15 percent; provided, that none of the factors associated with any industry shall be increased by more than 5 percent per year.***

~~[(5) Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.]~~

~~(6) Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:~~

(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.

(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.

(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.

(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons.]

(5) Case characteristics shall be applied by addition rather than multiplication. The premium adjustment resulting from the application of each case characteristic may be added to the base premium rate to determine the premium rate charged.

(6) The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group. No small employer health carrier shall inquire regarding health status or claims experience of the small employer or its employees or dependents until after the premium rate has been agreed upon by the carriers and the employer.

(7) Any adjustment in premium rates for a small employer plan or arrangement to reflect changes in case characteristics that occurred prior to the end of a rating period shall not be charged until the commencement of the next rating period.

(8) Differences in health coverage plan rates charged for health benefit plans by a small employer health carrier shall be reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans.

(f) Each rating factor that a carrier chooses to utilize *in the individual market* shall be reflective of claim cost variations that correlate with that factor independently of claim cost variations that correlate with any of the other allowable factors.

6 Medical Underwriting. Amend RSA 420-G:5, I to read as follows:

I. Health carriers providing health coverage for individuals ~~or small employer groups~~ may perform medical underwriting, including the use of health statements or screenings or the use of prior claims history, to the extent necessary to establish or modify ~~[premium]~~ **base** rates as provided in RSA 420-G:4. The commissioner may allow **small** group carriers to use standardized health statements **after premium prices have been agreed upon by the carrier and the small employer and only to use them for their reinsurance ceding decisions for the New Hampshire small employer reinsurance pool, established in RSA 420-G:6, III(a).**

7 New Paragraph; Medical Underwriting. Amend RSA 420-G:5 by inserting after paragraph VII the following new paragraph:

VIII. On or before July 1, 2005, the board of directors of the New Hampshire small employer health reinsurance pool shall establish, subject to the approval of the commissioner, a standard reinsurance underwriting form for use by small employer carriers doing business with the

New Hampshire small employer health reinsurance pool. Within 50 days after approval by the commissioner of the standard underwriting form the board shall require every carrier, as a condition of transacting small employer health insurance business in this state, to use such form after premium prices have been agreed upon by the carrier and the small employer and only to use it for their reinsurance ceding decisions for the New Hampshire small employer health reinsurance pool. The form may be amended from time to time as the board deems necessary, subject to the approval of the commissioner.

8 New Hampshire Small Employer Health Reinsurance Pool Established. Amend RSA 420-G:6, III to read as follows:

III. Health carriers shall actively market, issue, and renew all of the health coverages they sell in the small employer market to all small employers. *In order to facilitate active marketing in the small employer market:*

(a) There is established a nonprofit entity to be known as the "New Hampshire small employer health reinsurance pool." All health carriers, writers of health insurance, and any other insurer issuing health insurance in this state, and insurance arrangements providing health plan benefits in this state on and after July 1, 2005, shall be members of the pool.

(b) On or before July 15, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by September 1, 2005. The members shall select the initial board, subject to approval by the commissioner. The board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than 2 board members representing any one member company. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The vote shall be weighed based upon net health insurance premium derived from this state in the previous calendar year. To the extent possible, at least 2/3 of the members of the board shall be small employer health carriers. At least 2 members of the board shall represent health care centers and at least one member shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner shall be an ex-officio member of the board. In approving selection of the board, the commissioner shall assure that all members are fairly represented. The membership of all boards subsequent to the initial board shall, to the extent possible, reflect the same distribution of representation as is described in this subparagraph.

(c) If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

(d) Within 90 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with

the provisions of subparagraph (e) of this section. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 180 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments, as appropriate. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner. The board shall select a reinsurance pool administrator through a competitive bidding process to administer the pool. The board shall evaluate bids submitted based on criteria established by the board. Such administrator shall not be paid less than \$30,000 per year nor more than \$10 per insured life ceded to the reinsurance pool per month.

(e) The plan of operation shall establish procedures for:

(1) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(2) Filling vacancies on the board, subject to the approval of the commissioner.

(3) Selecting an administrator and setting forth the powers and duties of the administrator.

(4) Reinsuring risks in accordance with the provisions of this paragraph.

(5) Collecting assessments from all members to provide for claims reinsured by the pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(6) Any additional matters at the discretion of the board.

(f) The pool shall have the general powers and authority granted under the laws of New Hampshire to insurance companies licensed to transact health insurance and, in addition thereto, the specific authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this paragraph, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

(3) Take such legal action as necessary to avoid the payment of improper claims against the pool.

(4) Define the array of health coverage products for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this paragraph.

(5) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the pool.

(6) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the pool.

(7) Assess members in accordance with the provisions of this paragraph, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

(8) Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool.

(9) Borrow money to effectuate the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for insurers and may be carried as admitted assets.

(g) Any member may reinsure with the pool coverage of an eligible employee of a small employer, or any dependent of such an employee. Any reinsurance placed with the pool from the date of the establishment of the pool regarding the coverage of an eligible employee of a small employer, or any dependent of such an employee shall be provided as follows:

(1) With respect to a standard health care plan, the pool shall reinsure the level of coverage provided;

(2) With respect to other plans, the pool shall reinsure the level of coverage provided up to, but not exceeding, the level of coverage provided in a standard health care plan or the actuarial equivalent thereof as defined and authorized by the board; and

(3) In either case, no reinsurance shall be provided in any calendar year for a reinsured employee or dependent until \$5,000 in benefit payments have been made for services provided during that calendar year for that reinsured employee or dependent, which payments would have been reimbursed through said reinsurance in the absence of the annual \$5,000 deductible. The amount of the deductible shall be periodically reviewed by the board and may be adjusted for appropriate factors as determined by the board.

(h) With respect to eligible employees, and their dependents, coverage may be reinsured:

(1) Within 60 days after the commencement of their coverage under the plan as may be authorized by the board; or

(2) Commencing January 1, 2006, on the first plan anniversary after the employer's coverage has been in effect with the small employer carrier for a period of 3 years, and every third plan anniversary thereafter; provided, that reinsurance pursuant to this subparagraph shall only be permitted with respect to eligible employees and their dependents of a small employer which has no more than 5 eligible employees as of the applicable anniversary.

(i) Reinsurance coverage may be terminated for each reinsured employee or dependent on any plan anniversary.

(j) Reinsurance of newborn dependents shall be allowed only if the mother of any such dependent is reinsured as of the date of birth of such child, and all newborn dependents of reinsured persons shall be automatically reinsured as of their date of birth.

(k) Notwithstanding the provisions of subparagraph (h)(1);

(1) Coverage for eligible employees and their dependents provided under a group policy covering 2 or more small employers shall not be eligible for reinsurance when such coverage is discontinued and replaced by a group policy of another carrier covering 2 or more small employers, unless coverage for such eligible employees or dependents was reinsured by the prior carrier; and

(2) At the time coverage is assumed for such group by a succeeding carrier, such carrier shall notify the pool of its intention to provide coverage for such group and shall identify the employees and dependents whose coverage will continue to be reinsured. The time limitations for providing such notice shall be established by the pool.

(l) Except as provided in this paragraph, premium rates charged for reinsurance by the pool as approved by the commissioner shall be established at the following percentages of the rate established by the pool for that classification or group with similar characteristics and coverage:

(1) 150 percent, with respect to all of the eligible employees, and their dependents, of a small employer, all of whose coverage is reinsured in accordance with this paragraph; and

(2) 500 percent, with respect to an eligible employee of a small employer or a dependent of such employee who is individually reinsured and is not reinsured with all eligible employees of an employer and their dependents.

(m) Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(1) The assessment for the reinsurance pool shall be based on the number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate which shall be:

(A) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;

(B) Established no later than November 1 in the current fiscal year; and

(C) Anticipated to be sufficient to meet the pool's funding needs.

(2) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.

(A) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay the reinsurance pool's expense in a timely manner.

(B) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance

pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.

(3) The board shall impose and collect assessments on members of the pool.

(4) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

(n) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports of covered lives deemed necessary by the board and filed by the member with it.

(o) Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

(p) The board may defer, in whole or in part, the assessment of a health care center if, in the opinion of the board, payment of the assessment would endanger the ability of the health care center to fulfill its contractual obligation. In the event an assessment against a health care center is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this subparagraph. The health care center receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.

(q) Neither the participation in the pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this paragraph shall be the basis of any legal action against the pool or any of its members.

(r) Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the program against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this paragraph and such expenses shall be paid by the pool established in this paragraph.

9 Effective Date. This act shall take effect 60 days after its passage.
2005-0840s

AMENDED ANALYSIS

This bill makes certain changes in the small employer health insurance law, including:

I. Repealing health status as rating factor for small group health insurance.

II. Repealing geographic location as a rating factor for small group health insurance.

III. Adding a definition of case characteristic.

IV. Clarifying the small group health insurance law regarding premium rates for small employer groups with similar case characteristics.

V. Establishing the New Hampshire small employer health reinsurance pool to offer pool coverage to eligible employees of small employers.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 125 ought to pass with amendment. Senate Bill 125 would eliminate health status as well as geographic location as rating factors. It adds in a reinsurance mechanism that allows for health insurers cede certain risk to reinsurance pool administered by a nonprofit reinsurance entity. Small group would be defined as 1 to 50. The majority of the committee feels that this is the better solution to fixing the Senate Bill 110 flaws. The majority of the committee asks for your support of Senate Bill 125 as amended. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise in support of Senate Bill 125 for the reasons stated by Senator Gottesman. It addresses both some of the unintended consequences of the old SB 110 and also establishes a reinsurance pool that we believe will address some of the concerns that caused people to pass SB 110 in the first place about competition in the market and making our market more friendly to an increased number of insurance companies. I also note that I was just informed yesterday of a new fiscal note on this bill. It is not the intention of the sponsors to have this bill cause a fiscal impact on the state, so we welcome scrutiny of fiscal committee and sunshine is always a good thing. Thank you.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. If I may correct. There is not a fiscal note. What happened is that I made a couple of phone calls and I thought that we should present to this body, is there any cost to this. So I would ask Senator Hassan a question. Is there a cost to the state on this bill, Senate Bill 125?

SENATOR HASSAN: No, there is not. There is an assessment back to insurance carriers who provide insurance. There is no requirement that that be passed on to the state.

SENATOR FLANDERS: Isn't it true that the state of New Hampshire is self-insured so they would pay it?

SENATOR HASSAN: Well they have a stop loss policy for which they pay a premium, is my understanding. I would be happy to have this looked at by Fiscal, if in fact that is an issue, we can discuss it in Fiscal. It is not our intention to charge back to the state of New Hampshire.

SENATOR FLANDERS: Would you believe that there are 35,000 members of the State Health Insurance Plan and indeed at 58 cents apiece per month, that that would add up to approximately \$243,000?

SENATOR HASSAN: I am perfectly aware of the Department of Insurance's estimate in that regard. My issue, my response is 1) that it is not clear that all of that money gets charged back to the state of New Hampshire, and 2) the state of New Hampshire is in contract negotiations with its employees at this time and that may be something they want to address. So it does not appear to me to be a direct charge back to the state, but again, that's why we welcome the discussion in Fiscal.

SENATOR FLANDERS: Is there a charge to municipalities, towns and cities?

SENATOR HASSAN: There is a charge to insurance carriers, and if they insure municipalities and towns and cities, the towns and cities are not required by this law to pay the additional 60 cents per member, per month, a small portion of the average premiums that are paid in the state.

SENATOR FLANDERS: Is there a charge to small businesses and large businesses?

SENATOR HASSAN: There is a charge to insurance carriers that insure small and large businesses in this state. Not directly to small businesses. Again, insurance premiums are negotiated in this state. There is nothing that requires any insurance carrier in this state to pass on the cost of this to the businesses.

SENATOR FLANDERS: I hear you say it's not required. The history that we have had with the insurance companies in New Hampshire, do you believe that they will not pass it on?

SENATOR HASSAN: I don't know whether they will pass it on. I also know that this is the same way we assess our high risk pool in the individual market. So it seems to me something that we have reached a comfort level with doing before.

SENATOR FLANDERS: I did call the Municipal Association. They have 26,000 people in their self insurance program for the towns and cities, and that would amount to almost \$200,000 increased costs to the towns and cities. Thank you.

SENATOR HASSAN: Thank you, Senator Flanders. I will note that a number of employees have indicated to me their willingness for 60 cents additional charge per month, to share risk with their fellow citizens.

SENATOR BOYCE: I just wanted to ask a question. Can I ask Senator Flanders a question? Senator Flanders, I am just concerned that...I understand the reason why we passed Senate Bill 110 a couple years ago, was to bring competition back to the state. I am just very concerned whether or not this will drive that competition back out of the state. I know at that time, we basically had two insurers doing business in the state. I know we have several new ones since we passed 110. I'm asking if you have a feeling for whether this will reverse to the situation that we had after Senate Bill 666, no 711? 666 sticks in my mind for some reason.

SENATOR FLANDERS: Approximately four weeks ago we had an all day hearing on a Friday. We started at 10:30 in the morning and the hearing went until 4:30 in the afternoon. Many of the new insurance companies did indeed testify and they testified that, if we went back to community rating, they would leave the state. The representatives of the agents and brokers also testified that, if we went back to community rating, they would leave the state.

SENATOR BOYCE: In that regard then, do you think that this amendment is in any way beneficial to the small employers in the state?

SENATOR FLANDERS: The vote was 4-2 and one of the two votes was mine.

SENATOR BOYCE: Thank you.

SENATOR BRAGDON: Thank you, Mr. President. Senator Hassan, I am just concerned about something that I just heard about the extra cost, especially to towns and even school districts. Wouldn't that result in a 28-a violation?

SENATOR HASSAN: I think we need to have a hearing in Fiscal so we can understand exactly whether those costs are going to be paid on and then we can consider that issue.

SENATOR BRAGDON: Thank you.

SENATOR GATSAS: Senator Flanders, I assume you are familiar with our high risk pool in the state of New Hampshire?

SENATOR FLANDERS: Yes.

SENATOR GATSAS: I think you're familiar that there is an assessment charged for every covered life in the state of New Hampshire. I know that you asked the question of the Insurance Department to receive or to give you an answer on what it would cost the state. What is it costing the state today for the high risk pool?

SENATOR FLANDERS: I don't know.

SENATOR GATSAS: Would you believe that the assessment to the high risk pool that is being charged to everybody in the state is higher than the 58 cents?

SENATOR FLANDERS: I guess I would like to know the total amount.

SENATOR GATSAS: Well if 58 cents produces \$250,000 and if that 58 cent cost is higher in the high risk pool, I certainly believe that it would be more money to the state of New Hampshire and that has never been brought up. I don't understand.

SENATOR FLANDERS: I am sure you are right. But in my opinion, we are discussing 125 today and that's the fund we are talking about today.

SENATOR GATSAS: Would you believe that the wording in 125 is identical to the assessment charge in the high risk pool?

SENATOR FLANDERS: Yes I would.

SENATOR GATSAS: Thank you.

SENATOR HASSAN: Thank you, Mr. President. I just wanted to note that to Senator Boyce's question and Senator Flanders' answer on the issue of competition. Of the companies that left New Hampshire before the passage of SB 110, the vast majority of them left this state because they were nationally merging, going out of the small group business all together or went bankrupt. There is no evidence to indicate that the adjusted community rating system that we had before SB 110, which was not community rating, it was adjusted community rating that drove companies out in a large number. We believe that the reinsurance mechanism offered by SB 125 as amended, will in fact allow those small insurers that wish to enter this market, to enter with the confidence that a single high risk case will not put them out of business. That's the purpose of the reinsurance pool and we've gotten considerable strong reaction in favor of it. Thank you.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Roberge, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Boyce, Flanders, Odell, Eaton, Bragdon, Clegg, Letourneau.

Yeas: 17 - Nays: 7

Amendment Adopted.

**The question is on the adoption of the bill as amended.
Adopted.**

Referred to the Finance Committee (Rule #26).

Senator Boyce is in opposition to the passage of SB 125-FN.

SB 209-FN, relative to licensing of money transmitters and check cashers. Banks and Insurance Committee. Ought to pass with amendment, Vote 6-0. Senator Gottesman for the committee.

Banks and Insurance

March 15, 2005

2005-0637s

06/09

Amendment to SB 209-FN

Amend RSA 399-G:1, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) A business location within this state of a person required to be licensed under this chapter that is identified by any means to the public as a location at which a money transmitter or check casher conducts business and an entity designated by the money transmitter licensee to engage in the business of money transmission on behalf of the money transmitter licensee.

Amend RSA 399-G:1, III as inserted by section 1 of the bill by replacing it with the following:

III. "Check cashing" means receiving compensation for accepting payment instruments, other than traveler's checks, in exchange for money or monetary value delivered to the presenter of the instrument at the time and place of presentation without any agreement specifying when the payment instrument will be submitted for collection.

Amend RSA 399-G:2, V as inserted by section 1 of the bill by replacing it with the following:

V. Any license or registration fee required by this chapter shall be paid before a license or registration may become effective.

Amend RSA 399-G:5, II as inserted by section 1 of the bill by replacing it with the following:

II.(a) The license issued for the licensee's principal place of business shall be referred to as a "principal office license." Each additional authorization to conduct business issued for money transmission or check cashing activity occurring in a location in this state that is separate from the licensee's principal place of business shall be referred to as a "branch office registration." If the applicant desires to transmit money or cash checks in more than one location, the commissioner, upon favorable action on the applicant's principal office license, shall issue a branch office registration for each location where the business of money transmission or check cashing is to be conducted.

(b) Each license application shall be accompanied by a nonrefundable application fee of \$500 for each principal office and \$25 for each branch office registration, up to a maximum annual fee of \$4,000. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

(c) Each applicant shall submit detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a money transmitter or a check casher with financial integrity. The application shall include a statement of net worth in all cases and an applicant shall demonstrate and maintain a positive net worth computed in accordance with generally accepted accounting principles. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 399-G:13. Each money transmitter applicant shall post a continuous surety bond in the amount of \$100,000. Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the principal within 6 years after the act upon which the recovery or suit is based. The obligations of the surety shall survive the bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation, any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee under any applicable state or federal law, including the United States Bankruptcy Code.

Amend the section heading of RSA 399-G:6 as inserted by section 1 of the bill by replacing it with the following:

399-G:6 License and Registration Grant.

Amend RSA 399-G:6, I and II as inserted by section 1 of the bill by replacing it with the following:

I. If the commissioner determines that the applicant meets the requirements of this chapter, then the commissioner shall issue a license or licenses permitting the applicant to engage in the business of money transmission or check cashing in accordance with the laws of this state. Licensees shall be responsible for the supervision of their employees and agent. Principal office licensees shall be responsible for supervision of their branch offices.

II. Each license issued under the provisions of this chapter shall state the name and address of the principal office of the licensee. Each registration issued under the provisions of this chapter shall state the name and address of the branch office location for which that registration is issued.

Amend RSA 399-G:6, V as inserted by section 1 of the bill by replacing it with the following:

V. A license or registration issued under this chapter shall not be transferable or assignable between persons without obtaining the approval of the commissioner before the assignment or transfer.

Amend RSA 399-G:8 as inserted by section 1 of the bill by replacing it with the following:

399-G:8 License or Registration Term; Renewal.

I. Each license or registration shall remain in force until it has been surrendered, revoked, or suspended, or expires in accordance with the provisions of this chapter. Each license or registration shall expire on December 31 of each calendar year.

II. If a person holds a valid license or registration under this section and is in compliance with this chapter and the rules thereunder, such licensee may renew the license or registration by paying the required fee to the banking department on or before December 1 for the ensuing year that begins on January 1. Failure to renew the license or registration shall result in the license or registration terminating on December 31.

III. A renewal fee of \$500 for the principal office license and \$25 for each branch office registration, up to a maximum annual fee of \$4,000, shall be submitted with the application for license renewal.

IV. No application for renewal shall be denied without reasonable cause and the right of appeal pursuant to RSA 541-A and RSA 541.

Amend RSA 399-G:9 as inserted by section 1 of the bill by replacing it with the following:

399-G:9 License Posting. It shall be unlawful to engage in the business of money transmission or check cashing without a conspicuously posted license in the licensee's principal place of business within this state or a conspicuously posted registration in each of the licensee's branch offices within this state.

Amend RSA 399-G:10, I as inserted by section 1 of the bill by replacing it with the following:

I. No licensee shall conduct the business of a money transmitter or a check casher under a trade or other name that is different from the name stated in its principal office license without immediately notifying the commissioner, who shall then amend the license and any registrations accordingly.

Amend RSA 399-G:10, III as inserted by section 1 of the bill by replacing it with the following:

III. Licensees shall provide written notice to the department of any proposed change in location or proposed closing of any office no later than 10 business days prior to the effective date of such change of location or closing. In the case of an emergency, as determined by the commissioner, a licensee may close a registered branch office and provide notice of the closure to the department within 2 business days. Failure to comply with the provisions of this paragraph shall be sufficient cause for license revocation or denial of license renewal applications.

Amend RSA 399-G:11, I as inserted by section 1 of the bill by replacing it with the following:

I.(a) A licensee who ceases to engage in the business of a money transmitter or check casher at any time during a license year for any cause, including but not limited to bankruptcy, license revocation, or voluntary dissolution, shall surrender such license and office registrations, if any, in person or by registered or certified mail to the commissioner within 15 calendar days of such cessation of business, and shall cause to be published in a newspaper of general circulation in the licensee's market area a notice to such effect. The commissioner shall adopt rules, in accordance with RSA 541-A, relative to such notice.

(b) Withdrawal of the surrendered license and office registrations, if any, shall become effective 30 days after receipt by the commissioner or within such shorter period of time as the commissioner may deter-

mine, unless a revocation or suspension proceeding is pending when the license is surrendered or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the license is surrendered. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. The commissioner may nevertheless institute a revocation or suspension proceeding under RSA 399-G:19 within one year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which the license was effective.

Amend RSA 399-G:17 as inserted by section 1 of the bill by replacing it with the following:

399-G:17 Advertising. No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for check cashing or money transmission under the provisions of this chapter which is false, misleading, or deceptive.

Amend RSA 399-G:19, I(g) as inserted by section 1 of the bill by replacing it with the following:

(g) Is the subject of an order entered within the past 5 years by this state, any other state, or a federal regulator denying, suspending, or revoking a money transmission or check cashing license or registration.

Amend RSA 399-G:21, II(c) as inserted by section 1 of the bill by replacing it with the following:

(c) The application form for licenses and registrations required under RSA 399-G:5.

Amend RSA 399-G:21, II(f) as inserted by section 1 of the bill by replacing it with the following:

(f) The form of license and registration issued under RSA 399-G:6.

Amend RSA 399-G as inserted by section 1 of the bill by inserting after section 23 the following new section:

399-G:24 Applicability. Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before January 1, 2006, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within 3 years after January 1, 2006.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 209 ought to pass with amendment. This legislation was brought forth in order to prevent occurrences similar to the actions of CashPoint, who received utility payments from New Hampshire consumers and failed to transmit the funds to the public utility company. There was an issue regarding the Attorney General's case against the Simon Gift Card Company and that the bill originally written would affect the case. The amendment corrects the issue. The committee has the understanding that this bill will go to the committee on Finance to fix a few last minute issues brought to the committee's attention. The Banks and Insurance Committee asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 220-FN-L, relative to the payment of medical benefits costs for certain group II permanent firemen members injured in the performance of duty, and for disabled group II members of the retirement system. Banks and Insurance Committee. Inexpedient to legislate, Vote 4-2. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 220 inexpedient to legislate. The committee felt that the money needed to be available in the special account before we could take a look at this. This bill deals with both firemen and policemen, but we did not hear from the policemen and it would not be right to exclude them from this legislation. The committee feels that this subject needs more comprehensive look. The Banks and Insurance Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

Recess.

Out of recess.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Green.

Seconded by Senator Fuller Clark.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

SB 223-FN, relative to licensing nondepository mortgage bankers and brokers. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Flanders for the committee.

Banks and Insurance

March 15, 2005

2005-0636s

06/09

Amendment to SB 223-FN

Amend RSA 397-A:1, III as inserted by section 1 of the bill by replacing it with the following:

III. "Borrower" means a homeowner or purchaser of a home who obtains funds from another by the signing of a note and mortgage deed on a dwelling. The term shall include any legal successor to the borrower's rights or obligations.

Amend RSA 397-A:1 as inserted by section 1 of the bill by inserting after paragraph XIII the following new paragraph and renumbering paragraphs XIV – XXIII to read as XV - XXIV:

XIV. "Mortgage loan" means a first or second mortgage loan which is secured in whole or in part by a mortgage upon any interest in real property used as a dwelling with accommodations for not more than 4 families.

Amend RSA 397-A:2, I as inserted by section 2 of the bill by replacing it with the following:

I. This chapter shall provide for the [banking] department's regulation of persons that engage in the business of making or brokering [first] mortgage loans secured by real property located in the state of New Hampshire, which is or shall be occupied in whole or in part as a [primary domicile or] place of residence by the borrower and which consists of not more than 4 living units.

Amend RSA 397-A:3 as inserted by section 3 of the bill by replacing it with the following:

397-A:3 License Required. Any person not exempt under RSA 397-A:4 that, in its own name or on behalf of other persons, engages in the business of making or brokering [first] mortgage loans secured by real property located in this state shall be required to obtain a license from the [banking] department. ***Persons licensed as mortgage bankers may engage in the mortgage broker business without obtaining a separate license.***

Amend the bill by replacing section 6 with the following:

6 License Application; Requirements; Investigation. RSA 397-A:5, I-IV is repealed and reenacted to read as follows:

I. To be considered for licensing, each person shall complete and file with the [banking] department one verified application prescribed by the commissioner. At a minimum, the application shall state the primary business address of the applicant, the address of its principal office and all branch offices located or to be located within the state, and a list of the principals of the applicant. Each principal shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history. The applicant shall disclose whether the applicant or any of its principals has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or has ever been convicted of any felony.

II.(a) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(b) The persons described in subparagraph II(a) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set

of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(c) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(d) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

III.(a) The license issued for the licensee's principal place of business shall be referred to as a "principal office license." Each additional license issued for mortgage lending or brokering activity occurring in a location in this state that is separate from the licensee's principal place of business shall be referred to as a "branch office license." If the applicant or licensee desires to make or broker mortgage loans in more than one location, the commissioner, upon favorable action on the applicant's principal office license, shall issue a branch office license for each location where the business of making or brokering mortgage loans is to be conducted.

(b) Each license application shall be accompanied by a nonrefundable application fee of \$500 for each separate office location to be licensed. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

(c) Each applicant shall be required to submit to the department detailed financial information sufficient for the commissioner to determine the applicant's ability to conduct the business of a mortgage banker or a mortgage broker with financial integrity. The application shall include a statement of net worth. An applicant or licensee shall demonstrate and maintain a positive net worth. Net worth statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under the authority of RSA 397-A:12. Each mortgage banker applicant shall demonstrate a net worth at all times of at least \$100,000 or increase their posted continuous surety bond to a total amount of \$100,000. Each mortgage broker shall post a continuous surety bond in the amount of \$20,000 to the commissioner. Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 20 days in advance of the cancellation or termination of the bond. Every bond shall provide that no recovery may be made against the bond unless the state makes a claim for recovery or the person brings suit naming the licensee within 6 years after the act upon which the recovery or suit is based.

(d) Each applicant shall provide a list of all individuals, and the address of the work location of each such individual, who will act as originators for the licensee.

(e) No person shall be issued or continue to hold a mortgage license unless at least one person employed full-time in a supervisory capacity at the company's principal office shall have been actively engaged in the mortgage business in a similar supervisory capacity for a minimum of 3 of the preceding 5 years.

IV. Every applicant for licensing under this chapter shall file with the commissioner, in such form as the commissioner prescribes by rule, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with \$5, but is not effective unless:

(a) The plaintiff, who may be the attorney general in a suit, action, or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner; and

(b) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

V.(a) Upon the applicant's filing of the complete application and payment of the required fee, the commissioner shall have, in accordance with RSA 541-A:29, up to 120 days to investigate and determine whether the applicant's financial resources, experience, personnel, and record of past or proposed conduct warrant the public's confidence and the issuance of a license.

(b) The commissioner shall determine whether the applicant's proposed interest rates and fees are in accordance with the interest rates and fees charged by other first or second mortgage lenders, and whether said rates and fees will promote a free and competitive market.

Amend RSA 397-A:13, IV as inserted by section 14 of the bill by replacing it with the following:

IV. Any ~~[first] mortgage banker[, first] or mortgage broker[, or first mortgage banker and broker]~~ failing to file either the annual report or the financial statement required by this section within the time prescribed may be required to pay to the ~~[banking]~~ department a penalty of \$25 for each calendar day the annual report or financial statement is overdue ***up to a maximum penalty of \$2,500 per report or statement.*** ~~[The penalties for failure to file an annual report that are prescribed by this paragraph shall not apply to mortgage brokers licensed under this chapter who earned no money from purchasing, placing, or selling first mortgage loans during the preceding year and who indicate such in writing to the banking department on or before February 1 to a maximum penalty of \$2,500 per report or statement and shall be subject to suspension or revocation of its license.]~~

Amend the bill by inserting after section 14 the following and renumbering the original sections 15-47 to read as 16-48, respectively:

15 New Paragraph; Annual Report; Reply Required. Amend RSA 397-A:13 by inserting after paragraph V the following new paragraph:

VI. Any officer, owner, manager, or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

Amend RSA 397-A:14-b as inserted by section 17 of the bill by replacing it with the following:

397-A:14-b Compliance With Requirements for Funding of Loans at Real Estate Closings. A licensee shall comply with the provisions of RSA 477:52 relative to requirements for the funding of loans at real estate closings. *At a minimum, a closing requires the delivery of a deed if the transaction is a conveyance, the signing of a note, and the disbursement of the mortgage loan funds.*

Amend the bill by replacing section 18 with the following:

18 Borrower's Rights; "First" and "Home" Deleted. Amend RSA 397-A:15, V to read as follows:

V. Persons subject to or licensed under this chapter that service [first] mortgage [home] loans on real property located in the state of New Hampshire shall, within 5 days of receipt of a written request, provide a net payoff amount as of a specific date with a daily interest rate charge.

Amend the bill by replacing section 20 with the following:

20 Lender's Rights and Broker's Rights. Amend RSA 397-A:16, I-IV to read as follows:

I. [Lenders] *Mortgage bankers and mortgage brokers* may charge fees and points for services rendered in conjunction with the origination, closing, and servicing of loans; provided, however, that the [lender] *mortgage banker or mortgage broker* issues a written disclosure to the borrower stating the estimated amount and purpose of all fees and expenses within 3 business days of the receipt of a loan application. If any fee is collected in advance of the closing of the loan, the [lender] *mortgage banker or mortgage broker* shall provide the borrower with a written explanation of the purpose and disposition of the fee. A [lender] *mortgage banker or mortgage broker* may charge an application fee which may include the direct costs incurred by the [lender] *mortgage banker or mortgage broker* for processing an application, and for a real estate appraisal, a credit bureau report, or [for] income verification or other third party services. Notwithstanding RSA 479:30, a borrower who pays a [lender] *mortgage banker or mortgage broker* a fee for a real estate appraisal report, or who pays an application fee to a [lender] *mortgage banker or mortgage broker* which includes costs for a real estate appraisal, whether designated as a separate fee therefor or not, shall, upon written request, be entitled to obtain from the [lender] *mortgage banker or mortgage broker who authorized and ordered the appraisal and whose name appears on the appraisal report* a copy of the real estate appraisal report. The [lender] *mortgage banker or mortgage broker* shall certify on such copy that it is a true copy of the original report. Such certified copy shall be provided to the borrower within 10 business days of the date the [lender] *mortgage banker or mortgage broker* receives a borrower's request, receives the report from the appraiser, or receives such application or appraisal fee from the borrower, whichever is last to occur.

II. [~~Licensees~~] **Persons** subject to the provisions of this chapter shall comply with the provisions of RSA 384:16-c, relative to escrow accounts.

III. [~~Licensees~~] **Persons** subject to provisions of this chapter shall comply with the provisions of RSA 479, relative to foreclosure.

IV. Pursuant to RSA 397-A:3, only mortgage brokers **and mortgage bankers** licensed under the provisions of this chapter shall be entitled to retain commissions for services rendered.

Amend RSA 399-A:3, I as inserted by section 27 of the bill by replacing it with the following:

I.(a) Every applicant for licensing under this chapter shall file with the commissioner a written verified application, on a form prescribed by the commissioner. The application shall contain the name of the applicant; the address where the business is or is to be conducted and similar information for any branch office of the applicant; the trade name, if any, under which the applicant proposes to conduct such business; the articles of incorporation or organization or partnership agreement; the name and address of the New Hampshire resident agent if the applicant is a foreign entity; and such other pertinent information as the commissioner may require. The application shall include the names of the applicant's principal owners, officers, directors, members, partners, trustees, and beneficiaries, and the name of any person occupying a similar status or performing similar functions. Each such principal shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of its principals and whether the applicant or any of its principals have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or of any felony. Each applicant and licensee who conducts payday or title loan lending shall maintain an office in this state that is accessible to consumers. Persons subject to this chapter shall be responsible for the supervision of their employees, agents, and branch offices. Each initial and renewal license application shall be accompanied by a nonrefundable application fee of \$450 for the principal place of business of the licensee and the sum of \$450 for each branch of such licensee maintained in this state.

(b) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(c) The persons described in subparagraph I(b) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order

to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(d) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(e) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

Amend the bill by replacing section 38 with the following:

38 Licensing of Sales Finance Companies and Retail Sellers Required; Additional Information Required. RSA 361-A:2, II(a) is repealed and reenacted to read as follows:

II.(a) The application for such license shall be in writing and verified on a form prescribed by the commissioner. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the trade name, if any, under which the applicant proposes to conduct such business; and such other pertinent information as the commissioner may require. The application shall include a list of the names and resident addresses of principal owners, officers, members, partners, trustees, and directors of the applicant and the name of any person occupying a similar status or performing similar functions. Each listed person shall authorize the commissioner to conduct a background check. The applicant shall submit any other information that the commissioner may require including but not limited to the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and those persons listed in the application, and in the case of sales finance companies, the applicant's financial condition and history. The applicant shall disclose if any injunction or administrative order has been issued against the applicant or any of those persons listed in the application and whether the applicant or any of those persons listed in the application have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or convicted of any felony.

(1) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(2) The persons described in subparagraph II(a) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall

submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(3) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(4) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

Amend the bill by replacing all after section 46 with the following:

47 New Section; Lender's and Borrower's Rights; Second Mortgage Debt. Amend RSA 397-A by inserting after section 16 the following new section:

397-A:16-a Lender's and Borrower's Rights; Second Mortgage Debt.

I. The allowable rate of interest computed on the unpaid balance that any person may directly or indirectly charge, take, or receive for a second mortgage loan secured by property which is occupied in whole or in part at the time said loan is made as a home by any obligor on the mortgage debt or by any person granting or releasing any interest under said mortgage shall be the rate agreed upon in the note between borrower and lender, and following the sixth month of any period in which a loan has been in continuous default, not more than 1-1/2 percent per month on any unpaid balances.

II. Notwithstanding any other provisions of this chapter, the charges which may be collected on any second mortgage loan made under this chapter for the period beginning 6 months after the originally scheduled final installment date of a loan other than an open-end loan, or for the period beginning 6 months after the final due date of an open-end loan as established by the term applicable to the loan from time to time in accordance with the open-end note or loan agreement and ending with date of payment of the loan in full shall not exceed 18 percent per annum simple interest on the balances outstanding from time to time during said period. If the loan is an open-end loan the borrower's privilege for further loans shall not be reinstated by the licensee where the rate has been reduced under the preceding sentence unless the borrower executes a new open-end loan agreement.

III. The borrower shall have the right to anticipate his or her second mortgage debt in whole or in part upon payment of any prepayment penalty agreed upon between borrower and licensee, provided, however, that any penalty shall be clearly set forth in the loan documents; except that there shall be no penalty charged for prepayment of a second mortgage home loan after the loan has been in existence for 5 years. When an open-end loan agreement providing for advances from time to time

by the licensee exists between the borrower and the licensee, monthly loan payments shall be selected by the borrower as stated in the note or open-end agreement.

IV. Unless otherwise provided in the note, second mortgage loan payments shall be applied on the scheduled payment dates. Except where the borrower agrees in writing to a different application of his payments, in cases where partial payments are made, the interest shall be calculated to the time of payments, and such payment shall first be applied to interest, and the balance thereafter remaining, if any, shall be applied to principal. In addition to the interest permitted under this section, the lender may contract for and receive any additional other charge, as defined by RSA 358-K:1, XIII, as may be agreed upon by the lender and the borrower.

V. A licensee may retain any security interest in real property on an open-end loan until the open-end account is terminated, provided that if there is no outstanding balance in the account and there is no commitment by the licensee to make advances, the licensee shall within 10 days following written demand by the borrower deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust on the real property taken as security.

VI. The repayment provisions of any second mortgage loan shall be clearly set forth in the loan documentation and finance charges shall be clearly disclosed in accordance with RSA 399-B. Nothing in this chapter shall be deemed to limit any type of mortgage or repayment plan.

VII. For second mortgage loans where the payment is applied on the date received, the licensee shall provide to the borrower, at the time of application for the loan, a separate written disclosure which explains how the payments will be applied.

VIII. Upon payment in full of the outstanding principal, interest, and other charges due on a second mortgage loan, the holder shall plainly mark the note or a copy thereof with the words 'PAID IN FULL' or 'CANCELLED' and release or provide the borrower evidence to release any mortgage or security instrument no longer securing any indebtedness to the holder. If the original is retained by the lender, the original shall be returned within a reasonable period of time upon the written request of the borrower.

IX. If any note secured by a second mortgage, in the case of loans other than open-end loans, does not among its provisions clearly indicate the principal sums, the rate of interest, the period of the loan and the periodic due dates, if any, of principal and interest or, in the case of open-end loans, if the note does not among its provisions clearly indicate the maximum amount of credit available, the rate of interest, the selected payment, or its manner of determination, and the related period or periods of repayment and the monthly or periodic due dates, then the lender shall have no right to collect interest.

X. If any note secured by a second mortgage, in the case of loans other than open-end loans, does not among its provisions clearly indicate the principal sums, the rate of interest, the period of the loan, and the periodic due dates, if any, of principal and interest or, in the case of open-end loans, if the note does not among its provisions clearly indicate the maximum amount of credit available, the rate of interest, the selected payment, or its manner of determination, and the related period or periods of repayment and the monthly or periodic due dates, then the lender shall have no right to collect interest.

XI. If the borrower on a second mortgage loan or his or her authorized representative requests, by registered mail, the lender to furnish him or her with a copy of the note, the lender shall, within 15 days after receipt of said request, send by registered mail a true copy of said note to the person requesting the same at the address specified in such request. At least 15 days prior to the commencement of any foreclosure proceedings the lender shall send to the borrower by registered mail a statement of his or her intention to foreclose which shall specify the amount of principal, interest and other indebtedness, if any, owing and accruing under the note and mortgage. Failure of the lender to comply with the provisions of this section shall suspend his or her rights until such time as he or she complies with the provisions of this section.

XII. Upon payment of any money by the borrower on a second mortgage loan, the lender shall at the request of the borrower give him or her a receipt stating the date of payment, the amount paid, the amount applicable to interest on the loan and the amount applicable to the principal. Such receipt shall be signed by the lender or the lender's duly authorized representative. If a lender refuses, on written demand sent by registered mail, to give such receipt, the lender shall forfeit all interest on the principal sum.

XIII. Any second mortgage loan made in violation of paragraphs I-VIII by any person shall be discharged upon payment or tender by the debtor or any person succeeding to his or her interest in such real estate of the principal sum actually borrowed. Any agreement whereby the borrower waives the benefits of paragraphs I-VIII or releases any rights he or she may have acquired by virtue thereof shall be deemed against public policy and void. The superior court shall have jurisdiction of all suits arising under paragraphs I-VIII and, if a finding is made that such loan secured by any such mortgage violates paragraphs I-VIII, the borrower shall be entitled as a part of his or her costs to a reasonable fee for the services of an attorney in such suit.

48 License Revocation; Suspension; Unsworn Falsification Added. Amend RSA 397-A:17, I(1)-(m) to read as follows:

(l) Has violated applicable federal laws or rules thereunder; [or]

(m) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(n) For other good cause shown.

49 New Paragraph; Investigation of Application; License Requirements. Amend RSA 399-A:4 by inserting after paragraph XI the following new paragraph:

XII. Any officer, owner, manager or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

50 Denial, Suspension, or Revocation of Licenses; Unsworn Falsification Added. Amend RSA 399-A:7, I(i)-(j) to read as follows:

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; [or]

(j) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(k) Should not be licensed for other good cause shown.

51 Debt Adjustment Services; License Denial, Revocation, or Suspension. Amend RSA 399-D:13, I(n)-(o) to read as follows:

(n) Is insolvent, or has filed in bankruptcy or receivership, or made assignments for the benefit of creditors; [or]

(o) ***Has violated this chapter or any rule or order thereunder;***

(p) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(q) For other good cause shown.

52 Debt Adjustment Services; Reporting and Recordkeeping Requirements. Amend RSA 399-D:28, I(c) to read as follows:

(c) Each licensee shall also file, under oath, its financial statement with the commissioner within [60] **90** days from the date of its fiscal year end. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement, and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge.

53 New Paragraph; Debt Adjustment Services; Duty to Reply. Amend RSA 399-D:28 by inserting after paragraph VI the following new paragraph:

VII. Any officer, owner, manager or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

54 New Paragraph; Retail Installment Sales of Motor Vehicles; Duty to Reply. Amend RSA 361-A:2-b by inserting after paragraph V the following new paragraph:

VI. Any officer, owner, manager or agent of any licensee and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

55 Retail Installment Sales of Motor Vehicles; Suspension or Revocation of License; Unsworn Falsification Added. Amend RSA 361-A:3, I-a(i)-(j) to read as follows:

(i) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; [or]

(j) ***Has made an unsworn falsification under RSA 641:3 to the commissioner; or***

(k) For other good cause shown.

56 Administration by Commissioner; Rulemaking; Unsworn Falsification Added. Amend RSA 397-B:3, IX(g)-(h) to read as follows:

(g) Has violated this chapter or any rule or order thereunder or has violated applicable federal laws or rules thereunder; [or]

(h) *Has made an unsworn falsification under RSA 641:3 to the commissioner; or*

(i) For other good cause shown.

57 Mortgage Bankers and Brokers; Registration. RSA 397-B:4, I is repealed and reenacted to read as follows:

I.(a) Any mortgage servicing company which services first mortgage loans secured by real property located in the state of New Hampshire shall be required to register with the banking department by filing a registration statement on a form prescribed by the commissioner and paying an original registration fee of \$100. Each such registration shall expire on December 31 of each calendar year. A registration may be renewed by filing a renewal statement on a form prescribed by the commissioner and paying a renewal registration fee of \$50, on or before, December 1 for registration for the ensuing year. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation of the commissioner, consumer credit administration division.

(b) The applicant shall submit any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization and the applicant's proposed method of doing business. The applicant shall disclose whether the applicant or any of its principals has ever been issued or been the subject of an injunction or administrative order, has ever been convicted of a misdemeanor involving the lending industry or any aspect of the lending business, or has ever been convicted of any felony. Each principal shall authorize the commissioner to conduct a background check.

(c) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on the principals of each equity owner of 10 percent or more of the applicant unless such equity owner is a publicly traded corporation.

(d) The persons described in subparagraph I(c) shall submit to the department a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the banking department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(e) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(f) The department may require the applicant or licensee to pay the actual costs of the background investigation and a criminal history records check.

58 New Section; Mortgage Bankers and Mortgage Brokers; Duty to Reply. Amend RSA 397-B by inserting after section 4-a the following new section:

397-B:4-b Duty to Reply. Any officer, owner, manager or agent of any registrant and any person controlling or having a contract under which he or she has a right to control such a registrant, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a registrant's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

59 Repeal. The following are repealed:

I. RSA 398-A, relative to second mortgage home loans.

II. RSA 397-A:15, V-a, relative to a requirement that a mortgage payoff amount be provided within 5 days of receipt of a written request.

60 Effective Date. This act shall take effect July 1, 2005.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move that Senate Bill 223 ought to pass with amendment. Senate Bill 223 as amended simplifies the mortgage banker and broker laws. It combines second mortgages with first mortgages. It decreases the number of licenses from five to two - mortgage brokers and mortgage bankers. This would also allow record checks to be performed on a national level instead of just within the state. What we have had in the past is we needed a special license for people to write first mortgages and a special license for people to write second mortgages. It didn't make any common sense that they needed two licenses. They have combined the five as I said, into the two, increased the cost of the licenses and this is what the brokers wanted and the Banks and Insurance Committee asks that you support this motion of ought to pass with the amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 38-FN, relative to school building aid for certain receiving districts. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Bragdon for the committee.

Senate Education

March 15, 2005

2005-0626s

04/05

Amendment to SB 38-FN

Amend the bill by replacing all after the enacting clause with the following:

1 School Building Aid; Amount of Annual Grant. Amend RSA 198:15-b, I to read as follows:

I. The amount of the annual grant to any school district duly organized, any city maintaining a school department within its corporate organization, any cooperative school district as defined in RSA 195:1, [or] any receiving district operating an area school as defined in RSA 195-A:1,

or any receiving district providing an education to pupils from one or more sending districts under a contract entered pursuant to RSA 194:21-a or RSA 194:22, shall be a sum equal to 30 percent of the amount of the annual payment of principal on all outstanding borrowings of the school district, city, cooperative school district, joint maintenance agreement, or receiving district, heretofore or hereafter incurred, for the cost of construction or purchase of school buildings and school administrative unit facilities, to the extent approved by the department of education, provided that any school district may receive an annual grant in the amount of 40 percent for the construction of an educational administration building for school administrative unit, and provided that the amount of the annual grant in the case of a cooperative school district, joint maintenance agreement, [or] a receiving district operating an area school, ***or any receiving district providing an education to pupils from one or more sending districts under a contract entered pursuant to RSA 194:21-a or RSA 194:22***, shall be 40 percent plus 5 percent for each pre-existing district in excess of 2 and each sending district[;] in excess of one, and provided further that no cooperative school district, joint maintenance agreement, or receiving district operating an area school, shall receive an annual grant in excess of 55 percent.

2 New Paragraph; School Building Aid; Long-Term and Tuition Contracts. Amend RSA 198:15-b by inserting after paragraph I the following new paragraph:

I-a.(a) A receiving district situated in this state which is providing education to students from another school district situated in this state under a contract entered into pursuant to RSA 194:21-a or RSA 194:22, shall be eligible to receive the higher annual grant amount provided in RSA 198:15-b, I or RSA 198:15-v under the following conditions:

(1) The contract requires the receiving district to educate at least 70 percent of the public school students at particular grade levels from a sending district as provided in the contract.

(2) The contract contains a provision for the payment of capital costs for specific capital projects.

(3) The contract provides the manner in which school building aid is to be credited to school districts.

(4) The contract or sending district's obligation to pay capital costs is for a period of 10 years or longer.

(b) The provisions of this paragraph shall only apply for those years in which the contract is in effect. In all other years, the receiving district shall receive aid in the amount for which it would otherwise be eligible under RSA 198:15-b, I or RSA 198:15-v.

(c) No receiving district shall receive a school building aid grant which is less than what a single school district would receive under RSA 198:15-b, I or RSA 198:15-v.

3 Applicability. The provisions of this act shall apply to eligible school construction projects commenced on or after January 1, 2003. However, payment of grants shall be based on principal payments made for fiscal year 2006 and thereafter.

4 Effective Date. This act shall take effect 60 days after its passage.

2005-0626s

AMENDED ANALYSIS

This bill provides that a receiving district situated in this state providing an education to pupils from one or more sending districts situ-

ated in this state under a contract entered pursuant to RSA 194:21-a or RSA 194:22, shall be eligible under certain conditions, to receive annual school building aid grants.

SENATOR BRAGDON: Thank you, Mr. President. I move ought to pass with amendment on Senate Bill 38. Under this bill, school districts receiving tuition students from other towns on a contract basis would be treated the same as multi-town school districts for the purpose of computing building aid on related construction projects. The amendment adds a number of restrictions to the original bill, ensuring the only districts taking advantage of this opportunity are those in long-term, relatively exclusive contractual arrangements. The Education Committee feels this is an issue of fairness and unanimously recommends ought to pass as amended.

SENATOR GATSAS: Thank you, Mr. President. Senator Bragdon, is it your understanding that the communities that participate in Manchester with the additional funding going to Manchester, that they will be credited that building aid on their tuition?

SENATOR BRAGDON: Yes. Thank you, Senator Gatsas. It is my understanding that the contract with Manchester does call for crediting of that back to the towns sending students.

SENATOR GATSAS: Thank you.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 79, relative to the governance of the regional community-technical colleges. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Green for the committee.

Senate Education

March 16, 2005

2005-0668s

04/10

Amendment to SB 79

Amend RSA 188-F:3-a, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) [~~Nine~~] **As** non-voting, ex officio members: the governor of the state, the commissioner and deputy commissioner of the regional community-technical colleges, the presidents of the [~~4~~] **7** regional community-technical colleges, the commissioner of the department of resources and economic development, and the commissioner of the department of education.

Amend the bill by replacing sections 3-6 with the following:

3 Regional Community-Technical Colleges; Duties. Amend RSA 188-F:4-a, II to read as follows:

II. Oversee the administration of the department and its institutions, *including determining the organizational and administrative structure of the regional community-technical college system, excluding the planetarium as defined in RSA 12-L:1, III, the police standards and training council as established in RSA 188-F:24, and any other agency administratively attached to the regional community-technical college system.*

4 New Paragraph; Regional Community-Technical Colleges; Duties. Amend RSA 188-F:4-a by inserting after paragraph VI the following new paragraph:

VII.(a) Establish the salary of the commissioner of the regional community-technical colleges, who shall be appointed by the governor and council, and who shall serve as the chief executive officer of the regional community-technical colleges, as its primary liaison with the general court and other elements of state government, and as chief spokesperson for the regional community-technical colleges. The commissioner shall lead and coordinate the efforts of the chief officers of the component institutions of the regional community-technical colleges, and shall have such other duties as the board of trustees may determine.

(b) The board of trustees may submit recommendations for commissioner to the governor and council.

5 Regional Community-Technical Colleges; Rulemaking. Amend RSA 188-F:5, II and the introductory paragraph to RSA 188-F:5, II-a to read as follows:

II. The commissioner shall nominate a deputy commissioner, with the approval **and confirmation** of the board of trustees~~[, who shall be confirmed by the governor and council]~~. The deputy commissioner shall serve at the pleasure of the board of trustees **and shall be qualified by education and experience. The board of trustees shall establish the salary of the deputy commissioner.**

II-a. The commissioner shall nominate for appointment by the board of trustees, an unclassified director of financial management. The director shall serve at the pleasure of the board of trustees. The director shall be qualified to hold that position by reason of education and experience. **The board of trustees shall establish the salary of the director of financial management.** The director shall be responsible for the following functions:

6 Regional Community-Technical Colleges; Presidents. Amend RSA 188-F:8 to read as follows:

188-F:8 Presidents of the Regional Community-Technical Institute and Colleges. The commissioner shall nominate, subject to ~~[approval]~~ **confirmation** by the board of trustees, a president of each regional institution who shall ~~[be confirmed by the governor and council]~~ **report to the commissioner.** Presidents shall be qualified by education and experience and shall serve at the pleasure of the board of trustees. ~~[The salary of the presidents shall be established by RSA 94:1-a.]~~ **The board of trustees shall establish the salary for each president.**

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 79 ought to pass with amendment. Senate Bill 79 will enable the New Hampshire Community Technical College System to better serve their students. This bill will allow each campus to have their own president. Currently, each campus, other than Concord, has to share a president. For example, the president in Nashua shares a president with Claremont, shares as president with Claremont. It will also allow us for an increase in membership of the board of trustees, which will allow the system to have more diverse minds shaping the system. This bill will also help to create a more streamlined organization within the management structure that will better enable it to succeed in today's competitive postsecondary education environment. This bill also, in having a president at each of the campuses, will have a funding issue. With that in mind, we are recommending that this bill be referred to the Finance Committee

even though it does not have a fiscal note on it, since there is a cost factor involved. The Education Committee unanimously supported this bill and asks for your support. Thank you.

SENATOR BARNES: Just a question, Mr. President. Senator Green made mention of the fact that he wanted this to go to Finance because there is a fiscal impact. Before we vote on this, is that going to happen?

SENATOR EATON (In the Chair): We had not planned on sending it to Finance because they are looking for positions, but they are not looking to fund them yet at this point.

SENATOR GREEN: May I respond to that?

SENATOR EATON (In the Chair): Please.

SENATOR GREEN: According to the Department of Regional Community Technical Colleges, indicated this bill will increase state expenditures by \$385,033. I mean this is coming from the college. The issue, I guess becomes an issue as to whether or not we should not look at this issue in terms of cost. If the President and the Finance Committee feel that that's not necessary, that's fine with me, but I just want to make sure that I have been truthful and honest as to there is an impact financially.

SENATOR EATON (In the Chair): Senator Morse said he would be happy to look at it.

SENATOR GREEN: Thank you, Senator.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the legislation and I believe that we were told as a co-sponsor of the bill that the funds would be found within the entity and there would be no need for an additional appropriation. So I think because of the confusion, Senator Morse's group should look at it because we have a statement that there isn't a financial implication. If I might say that, the Community Technical System is being used by more and more students and, with the articulation agreements that have been put together where the first two years are accepted by the university system, this is a very inexpensive way for our students to get a quality postsecondary education. So anything we can do to enhance the efficiency of the Community Technical College System and their ability to handle these students, I think is something that we should do. I know that we worked for years to try to create these articulation agreements. This streamlining and allowing for the presidents to be at each institution I think would work well with what we have done and would make it better for the students of New Hampshire, which is what we are here for. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. My comments that I've made so far were in the purpose of disclosure. I fully support this bill. I think it's the right thing to do. I think that it does streamline the system. It adds members to the board. It also brings about the requirement that the board itself maintains its own authority over the system. They will set the salaries in this piece of legislation. The Commissioner will still be nominated by the Governor and elected by the Governor and Council. A lot of these things were changed from the original bill, which was really centralizing power in the Commissioner's office and we really went through that to make sure that they did not disrupt the overall process of appointment. We also maintained very carefully, the authority of the board to be the final arbitrator of how the system works. So I want it understood that my comments were in no way to discredit this bill because I really support this. I just want to make sure that

people...that there is a discretion here, a discussion about whether there is a financial cost or not. As a person that deals with budgets, even though the money's coming from the existing revenues, you still have to budget for those monies. You have to show that there is a source for those funds. Just because you can find money to offset the cost, doesn't mean there isn't cost. The cost basically comes in the amount of money that is necessary to put a president on each campus and I think that is important to do that. I think the money is there, but I just want to make sure that everybody understands that there is additional cost that will be in the budget dealing with this particular subject matter. Okay? Thank you.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 131-FN, establishing a school choice certificate program. Education Committee. Ought to pass with amendment, Vote 4-2. Senator Johnson for the committee.

Senate Education

March 15, 2005

2005-0650s

04/10

Amendment to SB 131-FN

Amend RSA 193-I as inserted by section 2 of the bill by inserting after RSA 193-I:12 the following new RSA section:

193-I:13 Source of Funds. Except for general funds specifically appropriated for the purpose of this chapter, the commissioner of the department of education shall not expend any general funds or federal funds appropriated to the department of education on the school choice certificate program. Each fiscal year, the commissioner of the department of education shall identify a source of funds sufficient to fund the school choice certificates requested in such fiscal year and shall inform the house and senate education committees of the source of the funding.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 Appropriation. The sum of \$1 for the biennium ending June 30, 2007 is hereby appropriated to the department of education for the purposes set forth in RSA 193-I. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

2005-0650s

AMENDED ANALYSIS

This bill establishes a school choice certificate program. The bill makes an appropriation of \$1 for the biennium ending June 30, 2007 to the department of education for the school choice certificate program.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 131 ought to pass with amendment. Senate Bill 131 will create a school choice certificate program for children who otherwise may be locked into a school that is not right for them. We all know that our public schools and teachers do an excellent job and, as a school board member, I can vouch for that; however, we also know that public schools are not the best aca-

demic environments for every child. For those of us who have dedicated our time and resources to our local schools, we know the importance of innovation and seeking alternatives as a way to provide the best learning environment for children, whether they are considered at risk or gifted. Students of varying capacities and skills deserve every opportunity to find the best possible educational environment. Unfortunately, in our current education system, educational choice is a reflection of personal, financial means. This bill will help those students from lower income families, find a school that best suits their educational needs. This bill does not promote any particular type of school, but instead empowers parents to make independent choices about which school is best suited for their child. The Education Committee has amended the bill to allow the Senate Finance Committee to further consider the funding structure; however, as introduced, Senate Bill 131 would provide parents with 80 percent of a state adequacy grant to choose a school for their child and the remaining 20 percent of the adequacy grant would stay with the host district. In addition, the bill adjusts the amount of the adequacy grant depending on family income, a policy that would provide a savings to the state. The Education Committee supports this bill and asks for your support. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. No surprise to my colleagues, I rise in opposition to Senate Bill 131. I rise to speak, not because I feel I can influence anyone's voice at this point, but simply to have the record reflect the reasons this bill continues to be one of the most disturbing I've encountered. Most disturbing, right about at a ten on the discomfort scale is the blatantly, unconstitutional intent of this bill. A voucher of approximately \$3,000 is obviously not going to cover private school tuition. But it could cover most of parochial school tuition. Finally, during this session's debate on this bill, the lobbyist for the church, when questioned about the no compelled support clause of the New Hampshire Constitution, replied he felt it would be good to send a test case on it to the court. Now the wording of this text is "no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination." No money ever. What exactly needs to be clarified about that text? A more straightforward approach would have been a companion constitutional amendment to this bill. I believe the constitutional provision we have was good public policy when it was enacted and it is good public policy today. It gives comfort to members of religious minorities, such as myself, that they are not working to send funding to religious education programs that foster hatred against them. You think this is an extreme application of this bill? Think again. From there, I go to the twisted concept of choice this bill represents. Who has the choice provided in this bill? Parents of students already admitted to private schools. Home schoolers who organize as approved schools surely win, as all taxpayers support the choice they have already managed to afford. If choice is important for all parents, there doesn't seem to be a point at which all taxpayers who qualify and want the benefit, can get it in this bill. What other taxpayer sponsored benefits program has the legislature enacted where the benefit is available to only a small percentage of the eligible population by a lottery, whose chances differ by school district? Sure, as the arguments some proponents of this bill hang their hat on, there may be the occasional underprivileged student who can attract enough of a private school scholarship to add to this voucher to actually give him or her a real non-religious private school choice. But remember, this is going to happen, according to the bill, in first

grade. Does it really make sense to create an enormously expensive program? Yes, I know, there is just \$1 in it right now. But what's the point except to expend money? To benefit so few of the children who really need some opportunities in education. I propose several different ways we could really reach those children in a meaningful way. For one, use the eligibility guidelines in this bill to subsidize tuition at the same level at private programs for infants, toddlers and preschoolers. Three thousand dollars would make a huge difference in the quality of early childhood education. The parents of these children are able to purchase in a system where the only choice is private. Not to mention our inability to stabilize funding for public education. This bill is bad public policy. It is not worthy of your support and it will not have mine. I request a roll call.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to this piece of legislation. I have great respect for Senator Johnson and the work he has done with regard to public education, both at the primary, secondary, and post secondary level. He has worked very hard to do some things. But let's talk for a moment about what public education is and what public education means. We don't want a homogeneous society; we want a heterogeneous society, and public education provides that. Public education provides an opportunity for everyone, free of charge, to educate themselves. That's a basic tenet of democracy. It's the basic tenet upon which this nation was built. Manchester, New Hampshire has the oldest public high school in the state of New Hampshire. Manchester High School Central is more than 150 years old. Guess what? We have produced Rhodes Scholars out of Manchester High School Central. We produced Mr. Rassias who created the Rassias method for teaching foreign languages. We have Mr. Freedman who became the president of the University of Iowa and the president of Dartmouth College. These are Manchester Central graduates. Yet, in Manchester, we have a very heterogeneous population. We speak seventy different languages at Manchester High School Central. We have an ESL program that works to provide English as a second language so that the students can become educated and can become productive members of our society. The opportunity to attend another institution is afforded anyone. We have more prep schools in New Hampshire I think, than any state in the country. Those prep schools offer financial assistance for particular students. Those students can apply and those students, if worthy, can get it. But we have one thing that we must take pride in, and that is quality public education. Anything we do to detract from that, we take away from that base. That base gives everyone an equal opportunity regardless of your race, regardless of your ethnicity, regardless of your religious belief. That is what public education is all about. Since I have been back in this legislature, we have tried biennium after biennium after biennium to come up with a solution for education, public education. We strive every day to make our public education better. We strive for accountability in public education. We put together rules and regulations for public education. We want our buildings to be better. We want our facilities, our recreation facilities, to be better. In Manchester, we just spent \$100 million to make our schools better. That is a commitment on the part of every person living in our city. In Nashua, you spent over \$100 million to refurbish your schools. That's what public education is all about. If we are going to begin siphoning off dollars, 6,000 students, 12,000 students, 14,000 students. Who are those dollars going to go to? It's obvious. Our goal is to make public education

better. Items like this detract from that goal. They take us off that path. I would hope that my colleagues will vote against the ought to pass and will put this bill were it belongs - inexpedient to legislate. Thank you, Mr. President.

SENATOR JOHNSON: Thank you, Mr. President. With all due respect to Senator D'Allesandro and Senator Estabrook, you know we will be debating this issue until hell freezes over I am sure, but Senate Bill 131 is a very modest approach to a solution to invite students and parents to join in a choice. We should be looking for innovative ways to improve education. I just got this Magna Awards book in the mail. I looked here and I saw, there are 17 states here that have innovative ways to bring about a difference in education. I don't see New Hampshire included in this list. But to point one of these out is one here that is a Second Chance Academy. That Second Chance Academy takes students who were going to be dropping out of school or failing and bringing them onto the campus, interested in what their choices are and it has been very successful in doing that. So that's what choice is all about. That's what innovation is all about. And having said that, I would say that I would support and greatly support your vote of ought to pass. Thank you.

SENATOR BOYCE: Thank you, Mr. President. First, I would like to point out that now would be an opportune time to actually end this discussion because we understand that hell has frozen over, the Red Sox won. But, my real question is, isn't it true under this bill, that a school that a student comes from ends up with 20 percent of the funding that they would have gotten if the student had been there? In other words, they get to keep 20 percent of the funding for not having the student there. So they're in effect having a beneficial effect on the other students because they have more money to spend on the other students that are actually still in the school. Isn't that correct?

SENATOR JOHNSON: Thank you for that question. That is correct. The student never even comes into the building, number one. Number two, I think that the financial part that has been laid out, and I believe that I sent a copy of that to all of the Senators, I think that that could be taken up in Finance and proven to be very effective for the state of New Hampshire. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Senator Johnson, did you know, Senator Johnson, that we have a very innovative program for people who drop out of school? It is called the PASS Program where we take students who have left school and bring them back through a very creative and innovative program, and its programs like that that have been instituted at the public level that try to encompass those who are leaving the school, but giving them the opportunity to come back. Would you believe that?

SENATOR JOHNSON: Yes, I would believe that, and I appreciate that. But I think that it should be something of this nature, which is statewide and gives all of the parents and students statewide to have an opportunity to participate.

SENATOR BRAGDON: Thank you, Mr. President. I speak as someone who is a strong supporter of strong public schools. I am a nine year member of my local school board as of last Monday, named for the seventh year of those nine years as chairman of the school board. I believe in strong public schools and I believe in competition among schools to make us stronger. I want to speak to the constitutional issue which has been

brought up because it's been alleged that the Constitution of the State of New Hampshire would not allow for this type of program. If you take the wording straight, out of context or without at least regard to other provisions of the Constitution, it does indeed say that "no money raised by taxes shall ever be granted or applied to the use of the schools or institutions of any sect or denomination." However, there's been a number of advisory opinions by the New Hampshire Supreme Court which have allowed the following. The use of grants for sectarian nursing schools. The use of public funds to ride transportation of private school students, both religious schools and non, to their schools. In fact, I regularly see a school bus from my district dropping students off at a local private school. Provision of nurses, guidance counselors of the public schools to be used by the private schools, and even loans of text books from the public schools to the private schools. So it seems to me that the New Hampshire Supreme Court and its advisory opinions has agreed with the US Supreme Court in its recent 2002 *Zelman decision*, that these types of grants are acceptable if they meet two criteria. If they are neutral to any specific religion, in other words, they are available to anybody, no matter where it is they want to go, and if the benefit that provides to the group is as a result of independent choices made by the parents. And this particular bill does exactly this. It provides choices to the parents to meet the specific needs of their individual students. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. Senator Johnson, you heard Senator Boyce's question about saving the 20 percent if the child doesn't have to go to the school and the school gets the money anyway. But isn't the reverse of that the fact that 80 percent of the funds that go for that child and for any other children who don't go to that school, are lost to the school district?

SENATOR JOHNSON: Senator Gottesman, as I indicated earlier, we are talking about policy today, and I think that is something that will be brought up in Finance. I think that is the proper place to bring that up.

SENATOR GOTTESMAN: Thank you.

SENATOR LARSEN: Thank you, Mr. President. You know, I think that some of us have been here long enough to have heard this debate many a time. Certainly it has been a debate in the communities. The real issue is are we going to support the very basis of our democracy which is a public school education. For so many years we have heard so much debate about how we need to pull this thing apart, we need to have so many other options for kids. Well we've created options within our charter schools. We now have publicly supported chartered schools in this state, and now we are hearing that we need to create a voucher program which is cleverly concealed under the title "School Choice Certificates". I would only remind you of the Constitution of New Hampshire, Part I, Bill of Rights, Article VI which says so clearly, "But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination." You all took an oath of office to support that. I ask that you remember that as you vote for this. I say we need to work together to strengthen our public schools, not destroy the very basis of what makes an informed democracy. Thank you.

SENATOR MORSE: Thank you, Mr. President. I am in support of a policy that helps low and moderate income parents to have the opportunity to exercise a choice in the education of their children. Like Senator Johnson, I believe this bill is not one critical of our public schools. Not at all in

fact. I believe that it is important that we help families. Low income families have a voice in choosing the school that's best for their child. More importantly, and I said it the last biennium, I have heard lots of opinions about how this program could or should be funded. I think we need to hear more about how the program is structured, and the right place to have that discussion is in Finance. I encourage the members to support this bill and send it to the Finance Committee for further review and discussion.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Estabrook.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

The following Senators voted No: Burling, Odell, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

Recess.

Out of recess.

SB 215-FN, banning the incineration of construction and demolition debris. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Odell for the committee.

Energy and Economic Development

March 15, 2005

2005-0647s

08/01

Amendment to SB 215-FN

Amend the title of the bill by replacing it with the following:

AN ACT creating a committee to study banning the incineration of construction and demolition debris.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study banning the incineration of construction and demolition debris.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study banning the incineration of construction and demolition debris.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

6 Effective Date. This act shall take effect upon its passage.

2005-0647s

AMENDED ANALYSIS

This bill creates a committee to study banning the incineration of construction and demolition debris.

SENATOR ODELL: Thank you, Mr. President. I move Senate Bill 215-FN ought to pass as amended. As amended, this bill will provide for creation of a study committee to provide an in-depth and thorough examination of the burning of construction and demolition debris. The committee recommends this study committee as the best way to help us make educated decisions in the future. The Energy and Economic Development Committee asks your support for the motion of ought to pass as amended. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I realize that in this bill we are now creating a study committee through the amendment in the calendar. I do, however, hope that, as the committee studies this issue, there is also an understanding that we need to put the brakes on what is fast becoming the serious danger to New Hampshire, of becoming an importer. We already are somewhat of an importer, but that we will become a state which imports construction debris and allows for its incineration at lesser regulation than any other state in the northeast. I understand that the people of this state, and I suspect the Senators in this room, treasure what is New Hampshire's clean environment, and the danger is, unless we put our foot down and say, during this period of study, there should be no new permitting. There should be a halt to importation of additional construction and demolition debris, particularly from out-of-state. Unless we do these measures, this study will have no effect. I understood that the likelihood of the Hopkinton Bio Energy plant getting a permit within the next year was very slim. I hope my understanding is correct. As was pointed out during the hearings, there are five schools within a five mile radius of Bio Energy. The Contoocook River is a drinking water source for Concord and is less than 250 feet from the smoke stack. We know that the emissions of lead cause severe and irreversible health effects. The lead toxins bio-accumulate in the bodies of human beings and particularly young people. Exposure causes damage to the brain and nervous system. It causes increased learning disabilities. There are huge ramifications in this issue. It is an issue in Hinsdale. It's an issue for Barnstead. It's an issue which we need to address. I am hoping that although we are saying in the Senate, at least in this bill, that we need to study it, that we will truly do that and that we will in fact, send the message from the Senate, that the Department is not to issue additional permits. We need time to look at this and create our own list of ways by which we believe the best elimination of con-

struction debris from our environment occurs. So I will support the ought to pass with amendment, but I wanted to make that statement because it is critically important for Concord and Hopkinton residents, but certainly the residents of the entire state, as these permits keep surfacing for applications. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 103-FN-A-L, relative to a shorefront maintenance fee. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Johnson for the committee.

Environment and Wildlife

March 17, 2005

2005-0716s

06/01

Amendment to SB 103-FN-A-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to the dam maintenance fund.

Amend the bill by replacing all after the enacting clause with the following:

1 Energy Efficiency Program; Dam Maintenance Fund. Amend 2001, 29:14 as amended by 2002, 268:6 to read as follows:

29:14 Energy Efficiency Program; Efficient Renewable Energy Programs; ***Dam Maintenance Fund.***

I. The public utilities commission shall phase-in, as quickly as can be effectively administered by Public Service Company of New Hampshire, an energy efficiency program for Public Service Company of New Hampshire that is funded at a rate of \$0.0018 per kilowatt-hour to be allocated from the system benefits charge. The public utilities commission shall not decrease the amount of the system benefits charge allocated to low-income customers due to passage of this act. ***The amount of \$500,000 shall be allocated annually to the dam maintenance fund, established in RSA 482:55, from the portion of system benefits charge used for energy efficiency program. Said sum is hereby appropriated to the department of environmental services for the purpose of dam maintenance. This appropriation shall be nonlapsing.***

II. Any restructured utility under RSA 374-F may, at its discretion, propose efficient renewable energy programs that would yield results similar to cost-effective energy efficiency measures and promote the benefits recognized in RSA 374-F:3, IX, and the public utilities commission should give due consideration to such programs. Such programs could be funded from a portion of the system benefits charge currently dedicated to energy efficiency programs.

2 Effective Date. This act shall take effect July 1, 2005.

2005-0716s

AMENDED ANALYSIS

This bill allocates \$500,000 from the energy efficiency program for the dam maintenance fund.

SENATOR JOHNSON: Thank you, Mr. President. Mr. President, as late as yesterday, I found out from LBA that our funding source for Senate Bill 103 is not monies that comes through the state, but is monies that are captured from the taxpayers of the utility Public Service of New Hampshire and is used for energy efficiency and low income credits on a customer's bill. So, if I may, Mr. President, I would ask that we re-refer Senate Bill 103 so we can take a look at all of the other funding options that might be available that have to take place to repair the dams that the state owns, which are about 296, I believe, that the state owns. It comes to somewhere between \$500,000 - \$700,000 a year. I respectfully ask that this bill be re-referred.

Amendment failed.

The question is on the motion of ought to pass.

Motion failed.

Senator Johnson moved to re-refer.

Adopted.

SB 103-FN-A-LOCAL is re-referred to the Environment and Wildlife Committee.

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act. Environment and Wildlife Committee. Ought to pass with amendment, Vote 3-1. Senator Johnson for the committee.

Environment and Wildlife

March 17, 2005

2005-0723s

08/03

Amendment to SB 128-FN

Amend the bill by replacing all after the enacting clause with the following:

I Integrated Power Plant Strategy. Amend RSA 125-O:3, I and II to read as follows:

I. The department shall implement ~~[an]~~ **one or more** integrated, multi-pollutant ~~[strategy]~~ **strategies** to reduce air emissions from affected sources.

II. The integrated, multi-pollutant strategy shall be implemented in a market-based fashion that allows trading and banking of emission reductions to comply with the overall statewide annual emission caps established under RSA 125-O:3, III(a), (b), and (d). Allowances, up to the amount of these caps, shall be allocated to each affected source based on the output of each affected source. The department shall make publicly available all allocations prior to the effective date of such allocations. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

2 Emissions Reduction. RSA 125-O:3, III(c)–(d) are repealed and re-enacted to read as follows:

(c) Total mercury emissions from all affected sources burning coal as a fuel, of 50 pounds per year beginning July 1, 2008, and a reduction to 24 pounds per year beginning July 1, 2010; and

(d) 5,425,866 tons annually applicable to total carbon dioxide (CO2) emissions from the affected sources until December 31, 2010. Beginning January 1, 2011, the commissioner shall establish by rule the annual cap

for total CO2 emissions based upon allowances submitted to, and received from, a regional interstate trading and banking program that shall be adopted prior to January 1, 2011.

3 Emissions Reduction. Amend the introductory paragraph of RSA 125-O:4, IV to read as follows:

IV. Compliance with the emission caps established under RSA 125-O:3, III may be demonstrated by making emission reductions at the affected sources, using compliance market-based approaches, or other methods acceptable to the department. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

4 New Paragraph; Emissions Reduction; Alternative Compliance Methods. Amend RSA 125-O:4 by inserting after paragraph V the following new paragraph:

VI. If affected sources are unable to comply with the emission cap for mercury established under RSA 125-O:3, III(c), the department shall recommend to the general court alternative compliance methods.

5 Emissions Reduction; Powers and Duties of the Commissioner. Amend RSA 125-O:6, I to read as follows:

I. Develop a trading and banking program to provide appropriate compliance flexibility in meeting the emission caps established under RSA 125-O:3, III(a), (b), and (d), and to encourage earlier and greater emissions reductions and the development of new emission control technologies in order to maximize the cost-effectiveness with which the environmental benefits of this chapter are achieved. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

6 Rulemaking. Amend the introductory paragraph of RSA 125-O:8 to read as follows:

125-O:8 Rulemaking Authority. The commissioner shall adopt rules under RSA 541-A[, commencing no later than 180 days after the effective date of this section,] relative to:

7 New Paragraph; Emission Reduction; Rulemaking. Amend RSA 125-O:8 by inserting after paragraph III the following new paragraph:

IV. The annual cap for total carbon dioxide emissions beginning January 1, 2011, as required by RSA 125-O:3, III(d).

8 Effective Date. This act shall take effect 60 days after its passage.

SENATOR JOHNSON: Thank you, Mr. President. Mr. President, I have a floor amendment to Senate Bill 128, which is 0910s.

SENATOR EATON (In the Chair): We will have to vote on the first amendment. So if you could tell us what you wish to have done with the amendment. Introduce the bill and tell us what you would like to have done with that.

SENATOR JOHNSON: Right. Thank you, Mr. President. On the amendment that is in your calendar, what that did was to change the dates for the emissions of mercury. The original bill which had it out a little further, I believe 2009 on 50 pounds of mercury, 2009 and 24 pounds in 2013. So, I looked at that amendment that came before the committee and I want to thank Senator Gallus for bringing the amendment forward. It really was something that we should discuss. I thought about it and felt that with my knowledge of what's going on that I didn't think that we could attain that. I don't think that we should be going forward with it, because I think the additional costs would also be a factor. I would ask that we vote down the amendment of ought to pass on Senate Bill 128 and we pass Senate Bill 128, and then I will bring this new amendment forward.

PARLIAMENTARY INQUIRY

SENATOR ESTABROOK: We are being asked to vote down the committee amendment without seeing the floor amendment. Is there any way we could see the floor amendment?

SENATOR EATON (In the Chair): I would be pleased to have that passed out and take a minute to digest it.

SENATOR ESTABROOK: Thank you.

SENATOR EATON (In the Chair): It is floor amendment 0910.

Recess.

Out of recess.

SENATOR EATON (In the Chair): Just to refresh. We are on Senate Bill 128 ought to pass as amended. Senator Johnson recommended that the amendment be voted inexpedient to legislate or voted down. And then he will speak to a new amendment coming up.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Green.

Seconded by Senator Barnes.

The following Senators voted Yes: Johnson, Kenney, Burling, Green, Roberge, Foster, Larsen, Gatsas, Barnes, Martel, Letourneau, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Boyce, Flanders, Odell, Eaton, Bragdon, Gottesman, Clegg, D'Allesandro, Morse.

Yeas: 14 - Nays: 10

Amendment adopted.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

March 24, 2005

2005-0910s

08/01

Floor Amendment to SB 128-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Integrated Power Plant Strategy. Amend RSA 125-O:3, I and II to read as follows:

I. The department shall implement ~~[an]~~ **one or more** integrated, multi-pollutant ~~[strategy]~~ **strategies** to reduce air emissions from affected sources.

II. The integrated, multi-pollutant strategy shall be implemented in a market-based fashion that allows trading and banking of emission reductions to comply with the overall statewide annual emission caps established under RSA 125-O:3, III(a), (b), and (d). Allowances, up to the amount of these caps, shall be allocated to each affected source based on the output of each affected source. The department shall make publicly available all allocations prior to the effective date of such allocations. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

2 Emissions Reduction. RSA 125-O:3, III(c)–(d) are repealed and re-enacted to read as follows:

(c) Total mercury emissions from all affected sources burning coal as a fuel, of 50 pounds per year beginning July 1, 2009, and a reduction to 24 pounds per year beginning July 1, 2013; and

(d) 5,425,866 tons annually applicable to total carbon dioxide (CO₂) emissions from the affected sources until December 31, 2010. Beginning January 1, 2011, the commissioner shall establish by rule the annual cap for total CO₂ emissions based upon allowances submitted to, and received from, a regional interstate trading and banking program that shall be adopted prior to January 1, 2011.

3 Emissions Reduction. Amend the introductory paragraph of RSA 125-O:4, IV to read as follows:

IV. Compliance with the emission caps established under RSA 125-O:3, III may be demonstrated by making emission reductions at the affected sources, using compliance market-based approaches, or other methods acceptable to the department. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

4 New Paragraph; Emissions Reduction; Alternative Compliance Methods. Amend RSA 125-O:4 by inserting after paragraph V the following new paragraph:

VI. If affected sources are unable to comply with the emission cap for mercury established under RSA 125-O:3, III(c), the department shall recommend to the general court alternative compliance methods.

5 Emissions Reduction; Powers and Duties of the Commissioner. Amend RSA 125-O:6, I to read as follows:

I. Develop a trading and banking program to provide appropriate compliance flexibility in meeting the emission caps established under RSA 125-O:3, III(a), (b), and (d), and to encourage earlier and greater emissions reductions and the development of new emission control technologies in order to maximize the cost-effectiveness with which the environmental benefits of this chapter are achieved. ***This paragraph shall not apply to mercury emissions under RSA 125-O:3, III(c).***

6 Rulemaking. Amend the introductory paragraph of RSA 125-O:8 to read as follows:

125-O:8 Rulemaking Authority. The commissioner shall adopt rules under RSA 541-A[, ~~commencing no later than 180 days after the effective date of this section,~~] relative to:

7 New Paragraph; Emission Reduction; Rulemaking. Amend RSA 125-O:8 by inserting after paragraph III the following new paragraph:

IV. The annual cap for total carbon dioxide emissions beginning January 1, 2011, as required by RSA 125-O:3, III(d).

8 Effective Date. This act shall take effect 60 days after its passage.

SENATOR JOHNSON: Thank you, Mr. President. If you look on line 14, you will see that the dates have changed. "Total mercury emissions from all affected sources burning coal as a fuel, of 50 pounds per year beginning July 1, 2009, and a reduction to 24 pounds per year beginning July 1, 2013." That's basically the major change that we have made from the report that came out of committee. I would ask for your support of the floor amendment 0910. Thank you, Mr. President.

PARLIAMENTARY INQUIRY

SENATOR GREEN: I have a parliamentary inquiry if I may?

SENATOR EATON (In the Chair): Senator Green.

SENATOR GREEN: We have just approved an amendment from the committee. As I understand, the new amendment changes the committee amendment. So, are we changing the committee amendment by adding an amendment to an amendment? I didn't know you could do that.

SENATOR EATON (In the Chair): You can have as many amendments as you wish.

SENATOR GREEN: On an amendment?

SENATOR EATON (In the Chair): On an amendment. The bill is open for further amendment and that's what we have.

SENATOR GREEN: So it's an amendment, which is different than the amendment we just approved. I respectfully disagree with you.

SENATOR EATON (In the Chair): We have many amendments on many bills.

SENATOR BOYCE: I simply want to rise to say that I was against this when it was originally put in, this multi-pollutant strategy on several basis, but one of them is that it defines, for the first time I have ever seen, the substances coming out of my mouth as a pollutant. Now I understand a lot of what comes out of everybody's mouth in here is a...but, I am sure that the daffodils appreciated carbon dioxide and didn't consider it a pollutant. I am sure that the oat farmer in the Midwest does not consider carbon dioxide to be a pollutant. To say that carbon dioxide is a pollutant is to stretch the definition of pollutant, well as far the court did when they said "cherish" meant to pay for education. So, I am opposed to this bill because it continues that. I am opposed to the classification of CO₂ as a pollutant because I see no scientific basis for doing so. **TAPE CHANGE** that's coming out of my mouth at this moment, which is water vapor. The greenhouse gases that we are concerned about are actually produced by nature, far more than anything man has ever done. There is more water vapor created by the sun warming the sea water. There's more carbon dioxide created by volcanoes, by natural decomposition of organisms. Those things all create more carbon dioxide than anything man has ever done or will do. So to consider this to be a pollutant is just, on its face, irrational and I am opposed to this bill on that basis. I am also opposed to this bill on the basis that it singles out mercury emissions from coal burning power plants to the exclusion of all other sources of mercury. It doesn't talk about mercury emissions from burning fire wood. It doesn't talk about mercury emissions from forest fires. It doesn't talk about mercury emissions because of any other source. There are multiple sources of mercury going into the atmosphere. This is just one of them one, but this bill says that we are only worried about if its from coal, fuel and a coal fired power plant. I believe the purpose of this is to shut down coal fired power plants and not necessarily make the environment better. So I am against this on several purposes and I will vote against it and I am glad there is a roll call. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise in support of the amendment that we just passed. I also just want to respond to my colleague from Alton. The reason the mercury emissions that are targeted in this bill are targeted is that we heard compelling testimony that the most effective way to reduce mercury emissions that are creating significant hotspots in New Hampshire, almost the entire southeastern region of New Hampshire, is to attend to the amount of emissions from

coal fire burning plants. They just produce much more than any other single source. And this is by far the most effective way to do it. It is not an accident that in my short time as a state Senator, the two bills that I have heard the most about are about health insurance and mercury reduction. The reason why that is not an accident is because mercury is currently polluting and poisoning the south/eastern part of New Hampshire. Southeastern New Hampshire is one of nine hotspots in the entire New England region that has dangerous levels of mercury in every water body. Our fish are polluted, our wildlife show signs of mercury poisoning. Just as lead was eliminated or greatly reduced from our environment after we understood the very damaging effects it had in the past, we need to eliminate mercury so that we can reduce the neurotoxin that it is and the neurological impairments and long term disabilities that it creates. So I support the concept of mercury reduction and I thank you for your attention.

SENATOR BARNES: Thank you, Mr. President. Senator Hassan, I admire your stance on it, but I question why you are in favor of this amendment that's going to push the dates further back and it's going to continue to give your red area, which I live in and you live in, continue to go on. Why are you in favor of pushing it back? Can you explain that to me?

SENATOR HASSAN: Senator, in a...during our committee hearings, we heard some testimony from PSNH that they were concerned about whether they could come up to speed on the technology to do this by time limits. They were not very specific about what they thought they could and couldn't do. Since then, they have communicated and other people have communicated that they have real concerns about whether they can produce this technology during that time.

SENATOR BARNES: Thank you. Senator Hassan, I was there for 90 percent of that testimony as were you. I thought I heard people from our own state of New Hampshire state that there are methods of taking care of this and they are already in use around the country. And that there is no reason why PSNH couldn't adopt some of these methods that are already in use. What do you think about that?

SENATOR HASSAN: I heard the same testimony. I think it was general testimony. We did not hear a lot of specifics about the technology, but I also have heard from other sources that they do have legitimate concerns about whether the time lines will work and so I thought this was a good compromise.

SENATOR BARNES: One last follow up. You have information that I was not privilege to. No one from PSNH has talked to me, and I guess you are fortunate that you heard. At least one member of the committee heard from PSNH. I didn't. I don't have this information that was given to you. Do you have copies of that information that was given to you, Senator?

SENATOR HASSAN: No, it was conversation Senator.

SENATOR BARNES: Conversation. Well, I am sorry that PSNH didn't share that with the other 23 members of the Senate. Thank you, Senator.

SENATOR HASSAN: Thank you.

PARLIAMENTARY INQUIRY

SENATOR MARTEL: I do. It is a parliamentary inquiry, Mr. President, but I can wait until the end. Wait until every one has spoken.

SENATOR GREEN: Thank you, Mr. President. I rise of course...I would like to support whatever we're going to do here, because I want to see mercury reduction. Okay? But I am really still confused and I am not going to ask a parliamentary inquiry, the Chair has already ruled on that. But I am going to explain to you why I have a concern. We just passed an amendment which is the committee amendment, which has certain dates in it on line 14 dealing with emission reductions. That is what we approved. In the new amendment, those dates change. My concern is, if you've got both amendments, where are we? You have conflicting amendments. That was my purpose for making the parliamentary inquiry. If you have all these amendments and they all pass, what are we supposed to think is the position of the Senate? Now I don't, I am just trying to get it straightened out in my mind so that I know that our actions are consistent, and when we come out of here we have a decision. If you have more than one amendment which are contradictory to each other, how do you know what the position of the Senate is? So I guess, as I look at this now, I am saying the clean way to create the position of the Senate is we approved the first amendment, which is the committee amendment, and at this point, regardless of if you think the second amendment is a good one, I think you have to figure out how that conflict gets resolved. I don't think you can pass two amendments which are in conflict with each other. Now that is my concern. So I am going to vote against the new amendment unless someone tells me how you're going to resolve the conflict. Thank you.

SENATOR CLEGG: Thank you, Mr. President. For those that are parliamentary confused, the first amendment that we voted on said "amend the bill by replacing all after the enacting clause with the following." When that amendment was adopted, the bill is now amended. There was a bill with that amendment in it. This new amendment says, "amend the bill by replacing all after the enacting clause with the following". So in essence, the last amendment you vote on, if you pass this amendment, amends the bill as it was amended. So there is no confusion. If you pass the Johnson amendment, that is what the bill will look like when you get a chance to vote on the bill as amended. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Seeing that there's apparently information out here from PSNH that some of us haven't received, I move to table this until we get that information so we can make an educated vote.

MOTION TO TABLE

Senator Barnes moved to have SB 128-FN laid on the table.

Motion failed.

SENATOR D'ALLESANDRO: Thank you very much, Mr. President. I speak in favor of the amendment. There isn't anybody here that doesn't want mercury emissions curtailed or certainly suppressed if at all possible. We are very concerned about the health of our constituencies, we are very concerned about the health of our youngsters and etc. I live in Manchester. As Senator Hassan points out, the hotspots moved in our direction and we want them taken care of. I think it is very important. I don't serve on the committee. I didn't have any conversations with Pub-

lic Service Company of New Hampshire, but what I did do was I called people who I have respect for, and asked them about this piece of legislation, because I think that is what I should do as an elected representative. I should go to people who I think are knowledgeable on the subject and who will give me straight answers. Now both Senator Gatsas and I were involved with deregulation. I think the one thing we did learn is that there are a lot of different views about electrical situations. And you are going to ascertain who you have confidence in. I called a number of people who I have confidence in and I discussed this piece of legislation with them. The feedback that I got was the compressed dates were very, very difficult to adhere to and, as a result, might not be accomplished. That was number one. Number two, then I took a look at the cost of the compressed dates based on the numbers that were given out, I guess, to the committee. And what I found was, under the compressed situation, and remember under the compressed situation there is no absolute certainty that this could be accomplished. The first year an 81 cent increase on the bill of the 460,000 people who are served by Public Service Company of New Hampshire, would be \$372,600 a month. That would mean \$4,471,200 a year. Over the first three year period, it would mean \$13,413,600. And, over the five year period, it would be \$22,356,000, without absolute certainty that the abatement could be accomplished. By moving them out, we have a better opportunity to do that. We keep all of the qualifications in the amendment that were in the initial amendment, and I think we give both the company and the people an opportunity to get some benefit. I think that is what we are here to do. To provide a benefit to our constituents and to try to do the best to protect health and safety. I went to the people in Manchester, particularly at the Manchester Water Works and I said, "What about mercury in the water? Has there been a higher evidence?" And the answer was no. That's important. Manchester has probably the finest water in the state or I think they have the finest water in the state obviously, because I am from Manchester. So I think you do your due diligence and then you make a value judgment. The value judgment is well what's the best thing that could be done that's going to produce the most positive result. In my opinion, the Johnson amendment does that. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. I wasn't planning on speaking but I guess now I have decided to jump into the water. My colleagues, remember that when we talk about costs, I think May of 2003., and if we are talking about costs that are going back to ratepayers, in 2003 I talked about keeping the cap on Public Service. That cap was at 4.8 cents per kilowatt. Since that time, in 18 months, the ratepayers have seen roughly a 40 percent increase. I think that if the ratepayers were asked, would you rather see a rate increase that guarantees profit or a rate increase that is going to save lives? Ratepayers would probably tell you they would rather see an increase to save lives. The bill has some certain effects to it and the bill says, that 1) If Public Service can't meet those demands of 50 pounds per year, they can go to DES and asked to change that. So, if we wait until 2009 and they can't meet those emission control standards, then in 2009 they are going to ask for that date to be pushed out. I think mercury is important enough that we all take a look at it because we heard in the state of New Hampshire it's not only polluting the fresh water fish, but lobsters are getting involved in it and saltwater fish. There is no question that 2008 makes the standard a lot

tougher. There is no question that the people in New Hampshire have the ability, if that can't be met, that nobody is going to be charged 84 cents per kilowatt because I am sure that Public Service is going to go to DES and ask them to extend that time because the proper technology not being in place. I think that is what this bill allows for. So it allows them to, at that point, to ask for that same extension in 2009. So again, if we are talking about ratepayers paying the bill, and I am not too sure that it shouldn't be a shared cost with stockholders and ratepayers, that saving lives and mercury emissions is important. So with that, Mr. President, I will vote against the amendment.

SENATOR BURLING: Thank you, Mr. President. This is an example of how votes change and minds move in the course of a great debate. I came here thinking I was going to do one thing and I am going to do something different. I rise in support of the amendment we just passed and in opposition to the adoption of the current amendment. I thank both the speakers who preceded me for reminding me what this is really all about. It is not about kilowatt hours or charges, it's about mercury. Mercury is a substance we should neither ingest, inhale nor give to our children. And, if we believe that it's up to us to stand for the future of New Hampshire, we should set the highest possible standard to get mercury out of our water and our air. And I thank you, Mr. President, for the chance to say that. It is that that will motivate my vote.

SENATOR BOYCE: I just wanted to clarify that I had originally intended to speak after this amendment was passed and so my remarks...I was a little ahead of myself. I had also agreed earlier that I would support this amendment. So I will be voting for this amendment but against the bill on passage.

SENATOR LETOURNEAU: Thank you, Mr. President. Unfortunately, when we took our first roll call, I got a little distracted and I thought I was voting on the Johnson amendment. So I will be supporting this amendment as it comes up. I did want to make a few comments about what is going on with mercury. I understand the passions of the folks around here on mercury of those of us who support moving forward with mercury controls; however, not just any control. We have to do this logically and with some understanding of economics. Customers who are making decisions daily about whether or not to pay for food, medication or electricity and customers cannot afford to pay for control for mercury when reality of the chosen policy doesn't do as is anticipated. We need time to come up with this technology. I am not going to read this whole thing that I had prepared for this debate, but I do want to point out that the United States is the only country in the world that is requiring mercury controls and New Hampshire wants to be ahead of the rest of the country. That means New Hampshire electric customers will bear the cost of technology that is not proven. So we need to move forward in a slow and deliberate manner. I think Senator Johnson's amendment will do that. Thank you.

SENATOR FULLER CLARK: Thank you very much. I would like to speak in opposition to the amendment that is before us and in favor of the vote that I just passed for the stricter standards. I have a map here that I think that everyone, if they haven't seen it, should have a chance to look it, that really shows what the issue is for the southern part and the eastern part of the state in terms of the risk or the hotspots and mercury

pollution. I think that we should go for the tougher standards and I also recognize that in the legislation in the amendment that we just passed, there is an opportunity for PSNH to come back if they cannot meet those earlier deadlines. But on behalf of my constituents and for the health of New Hampshire, I have to support the tougher deadlines. Thank you.

SENATOR HASSAN: Thank you, Mr. President. Having been reminded by my colleague, Senator Gatsas and by my colleague, Senator Fuller Clark of the portion of the bill that allows PSNH to come back if it is unable to meet the demands of the bill by the timeline set out in the amendment that we already passed, I too, will vote against this amendment. Thank you.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Clegg.

Seconded by Senator Bragdon.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Barnes, Letourneau, D'Allesandro, Morse.

The following Senators voted No: Gallus, Burling, Green, Larsen, Gatsas, Martel, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

SB 133-FN, relative to mooring permits. Environment and Wildlife Committee. Inexpedient to legislate, Vote 4-0. Senator Johnson for the committee.

MOTION TO TABLE

Senator Johnson moved to have SB 133-FN laid on the table.

Adopted.

LAIID ON THE TABLE

SB 133-FN, relative to mooring permits.

SB 33-FN, requiring the department of health and human services to seek national accreditation. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-2. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move that Senate Bill 33 be inexpedient to legislate. The committee felt that this bill was a good idea in principle, but it would be a tremendous cost to the Department of Health and Human Services in order to implement the program. The ED and A Committee asks for your support for inexpedient to legislate. May I speak to my motion, Mr. President?

SENATOR EATON (In the Chair): Please.

SENATOR KENNEY: Thank you. There is a genesis to this bill which occurred last year when we passed Senate Bill 86 and Senate Bill 86 had the Department of Health and Human Services develop a plan for the department to achieve accreditation by the Council on Accreditation for Children and Family Services, Incorporated. Now this plan at that point, shall contain 1) Inputs, including staffing requirements, a time table for achieving those requirements, projected budgets for achieving those requirements and any other costs associated with achieving the accreditation. And, secondly, there are outcomes, including an assessment based on statistical and other evidence for the impact of accreditation on the number of abused and neglected children, the nature of their abuse and the neglect, and the relationships between such children and their families. This plan was to be submitted February 1, 2004 to the Governor, to the President of the Senate, the chairs the Finance and Public Institutions, Health and Services Committee of the Senate, the Speaker of the House of Representatives, the chairs of Finance and Children and Law Committees of the House of Representatives, the Legislative Budget Assistant, the Advisory Board established in RSA 170-G:6 and the New Hampshire Child Fatality Review Committee. Mr. President, this bill has a lot of good intent as far as it was intended to do, to implement a plan for accreditation. The difficulty in passing this bill today is the cost of this particular legislation. The largest cost in the fiscal note is that DCYF needs to staff seven days a week, and 24 hours a day for the child neglect and abuse reports and intakes. The second largest cost is the hiring of four additional child coordinators which have an annual salary of \$55,600 per year, per position, half paid by the federal government. They would also need to hire 19 additional staff positions, nine of which would be full time. If you look at the fiscal note, and there is a fiscal note for this Senate Bill 33, the total sum comes to \$956,630 in the first year. Now, over a course of several years, we would see that this would increase incrementally. The state of affairs in the Health and Human Services is such as we know today that the commissioner is asking for over \$100 million in cuts. This would only add to the costs by trying to go forward with this accreditation process. This is a process that probably needs to occur in the future, but given the financial state in the state of New Hampshire, I believe that we need to ITL. I'd also like to make one last observation. In the fiscal note it states, "The Department stated this report was not an in-depth assessment of the entire DCYF system and if the department applies for accreditation, there will be substantially more areas and standards that will need to be addressed. The Department is not able to identify these areas or estimate the additional costs." So, as you can see, there is actually more cost above and beyond what we would see in the first year if we were to go forward with implementation of this accreditation process. So I would again urge the full body to support the committee report.

SENATOR MARTEL: Thank you, Mr. President. I rise in opposition to the committee report of inexpedient to legislate and I urge my fellow Senators to think hard and long about having an ought to pass motion on this bill once we overturn the inexpedient to legislate motion. How much would it cost DCYF to become accredited? Well, the new numbers show that it would cost \$26,550 for the accreditation costs and \$1,500 for the preparation of the paperwork, for a total of \$28,050 and the possibility that, if they do hire or transfer four people from the Department of Health and Human Services to DCYF, that they would have \$191,800 salaries attached to those four people. Now, the Department admits that

it has enough people within its own department to handle the manpower necessary, even 19 possible people in the future, if that ever came to fruition. Has accreditation improved child protection in other states? Absolutely. In Illinois for instance, the number of child abuse victims has decreased 48 percent. The number of families in which abuse has taken place was reduced by 42 percent. Child sex abuse victims dropped by 40.5 percent. So taking into state custody dropped by 44 percent. Infants exposed to drugs by 70 percent. Accreditation assisted the state of Illinois to reach these goals. And reality shows just how much of a drop in these severe areas that there was in the state. And they are also similar in the other states that have accreditation. Has it improved children protection in those states? Absolutely. Does New Hampshire require accreditation of any other state services? The answer is yes. Our water testing laboratories are accredited. The District Court buildings are accredited. Community Health Programs, Regional Community Technical Colleges and Real Estate Courses are required to be by law to be accredited. Numerous occupations and professions require a degree from a accredited educational institution in New Hampshire licensure. Why is it that these different entities can be accredited but DCYF can't be accredited? Does accreditation require, does it ensure that the tax dollars are buying quality? Absolutely. If DCYF meets nationally recognized best practice standards that include continuous quality improvement, including planning, outcome measures and quality monitoring, human resource management and financial management are all inclusive in the accreditation. Do we achieve federal mandates if we get accredited? Absolutely. In fact it's mandatory. In fact, in the last review from the federal government, it concluded that New Hampshire's child protection system needed improvement in 8 out of 14 areas it examined, including nearly every area related to children and safety, permanency and wellbeing. How much can New Hampshire be fined, initially if we don't get accredited? Well, that's \$200,461 if it doesn't meet these federal requirements today. That will continue rising as time goes by until we get our accreditation. DCYF is an excellent agency. I was very fortunate to have dealt with them for the last seven years with so many cases. Many of you remember that there was a young child that was beaten to death by her mother's boyfriend. We filed legislation and passed that law. I am very proud to say that now there is a new system in place that really protects children from this abuse, and DCYF responds. And that first respond is based on the complaints they receive. They do not just answer the calls like they used to or use the excuse that they didn't have enough staff. They solved the problem. Now, we have a couple more cases that we are working on with DCYF. Now some of you here may say "I haven't gotten any calls. I got no complaints." I didn't have any complaints. I am sorry for the poor English. Well you might not. You live in towns. It doesn't mean that you never will have those problems, because it's just not inherent to small towns or big cities. It is inherent across the entire state. The entire region. We can stop this today by overturning this inexpedient to legislate motion and then have another motion made of ought to pass and get us on the right road of accreditation for the DCYF area. The Department does support this. I urge you to please consider what I just said and please consider that motion to overturn the inexpedient to legislate that the committee adopted. I thank you very much for your time. I know we have a long day. I would be glad to answer any questions that you might have. Thank you, Mr. President.

SENATOR KENNEY: Thank you, Mr. President. Thank you, Senator Martel, for taking my question. You mentioned that the Department supports this. I am getting conflicting signals. In the committee report we have Nancy Rollins, the Director who came in and opposed this bill. And the legislative liaison to Commissioner Stephen, Gregg Moore said the Commissioner was in opposition to the bill. I think everybody agrees to the policy of the bill in nature, in that we need to reach that accreditation. But right now with the extenuated circumstances with the finances of this bill and we are creating an open bucket, because in the fiscal note its based an open ended expenditures that we haven't really identified. So I guess my question is, how did you get the understanding that the Department supports this bill?

SENATOR MARTEL: I have been talking with the Commissioner. Senator, that is a very good question. Senator, I have been talking to the Commissioner about this and many other issues since we started and even before we began our new session here. He's urged me to pursue this accreditation because of what the Department could be facing and DCYF could be facing by the federal government and mandates they will put on the state of New Hampshire if we are not accredited. He mentioned to me that it could be a monster that we may not want to open the door to. I agree with him. I have spoken to Jack Lightfoot and Mr. Lightfoot and also Steve Varnum, advocates for DCYF. They have also given me the same information that the Department was supportive of this accreditation plan. We are not...this is not based on a fact that this is like a wish list of saying, "Geez, we'd like to have ourselves accredited." It is really at the point of being mandatory now. Okay? And we face that, and if we don't, we have some major problems coming before us. So this is where that information came from.

SENATOR KENNEY: Thank you. Just a follow up to Senator Martel. This is an important piece of legislation, I recognize that and I don't want to go against the senior department leadership in who my understanding, sent in their person to oppose the bill, yet I do understand that there are, Jack Lightfoot of Child and Family Services, Steve Varnum came in support of the bill. I understand that there is an idea that we've got the plan, we want to go forward, hopefully down the road with the plan, but what we are really talking about is the financial impact of this plan and how much it's going to cost. I think that is where we are dividing at the fork in the road. There is the policy fork and there's the financial fork. I don't think they support the financial fork right now, primarily because of the federal monies that are being taken away from the state when it comes to Medicaid and Medicare and we are looking at these 100 million dollar cuts that are coming out of that agency. It is very difficult to go to that agency and say tack on another million. I think that is where the committee was coming from.

SENATOR MARTEL: I understand, Senator Kenney and that's a very good point. The committee, I am sure, thought this out very well. Okay? The issue is that we can't afford not to accredit DCYF because the monies that we are going to be paying out in fines may well exceed any amount that we are putting in today to be accredited. So we have to look at it in that aspect and in that way when we look at this bill so that we can pass this bill. I gave you the numbers as to what it would cost to have accreditation, plus the staff persons, okay, if necessary. People are telling me within DCYF that they do have enough staff to fulfill those positions, even in the coordinators who supervise child protection workers. So they do have that staff available.

SENATOR BARNES: Thank you, Mr. President. Question of Senator Kenney. Senator Kenney, I'm fortunate enough to sit on your committee and I thought I heard Nancy Rollins who represented the Department say that the Department was against this. There seems to be some sort of a conflict here. Do you happen to have her testimony in front of you? Do you have the committee report that you could read her testimony to the rest of the body and put this to rest once and for all?

SENATOR KENNEY: Thank you for that question, Senator Barnes. The official transcript as I know is still being worked on and that we have the abbreviated hearing report, and in that abbreviated hearing report it says who opposed the bill "Nancy Rollins."

SENATOR BARNES: Thank you very much.

SENATOR FULLER CLARK: For Senator Martel. Senator Martel, am I correct that if it did turn out that there were not enough child coordinators, that the federal government would pay for half of the salaries of that additional staff that is needed?

SENATOR MARTEL: There is a possibility that federal monies would come in, yes Senator, to cover part of the expenses that would be necessary in the Department of DCYF.

SENATOR FULLER CLARK: Thank you very much. I would like to say as being part of that committee that I also heard and have received written information that what's important is to get the accreditation. The cost for the accreditation is \$28,000. Is that correct?

SENATOR MARTEL: Correct.

SENATOR FULLER CLARK: The issue of additional staff that might have to be hired is not what we are seeing in the fiscal note that came to our committee?

SENATOR MARTEL: That is correct. The fiscal note, what it says is that to hire four additional coordinators. And they do have them already on board within the Department. If they could utilize those people, they're already in the budget. Their salaries are already budgeted. It would be a transfer from one department to the other. Departmental transfers are done all the time. But that would equate to about \$192,000 for those four positions. So, if you want to just go out and hire four new people, you'd be paying out \$192,000 in salaries over time. Plus the \$28,050 for the accreditation.

SENATOR FULLER CLARK: Half of that, if was the case, would be paid by the federal government. Is that not correct?

SENATOR MARTEL: Some portion of it. I don't know if its exactly half, but I know it's a percentage close to half.

SENATOR FULLER CLARK: But, right now that's not the issue because it's possible to transfer people from one department to another to meet what ever those additional accreditation requirements might be?

SENATOR MARTEL: That's correct.

SENATOR FULLER CLARK: Thank you.

Recess.

Out of recess.

SENATOR ESTABROOK: Thank you, Mr. President. I rise to urge my colleagues to overturn the committee's ITL on Senate Bill 33, because

that is what's in the best interest of New Hampshire's children. I mean some very basic best interest. Protection from abuse and neglect. Child protection, adoption and foster care are the areas covered in this process. As Senator Martel said, we last visited this issue with the Cassidy Bortner Bill, SB 86, named for the little girl who tragically lost her life. With that legislation, we required Health and Human Services to create and cost a plan to achieve accreditation. The Executive Departments and Administration Committee now seems to have ITL'd this bill based on a fiscal note which is much higher than the fiscal impact estimated in HHS's own plan. Most of that difference is due to the inclusion in the HHS numbers of staff necessary to provide 24/7 coverage. The council on accreditation has offered written opinion that I have here and can share, "that the current 'Help Line' arrangement New Hampshire uses would meet the accreditation standards for 24/7 coverage" meaning that entire piece of the fiscal note is unnecessary. That would leave a fiscal impact of a little over \$200,000. That's the same cost as the federal fine we may receive if we don't improve in eight areas cited in the '03 federal review of DCYF. This bill would bring us into compliance. In a division which has a case load of over 12,000 and a budget of over \$8 million, it seems both wise and prudent, to invest \$200,000 in a system that shows what's working and how. Accreditation is also a system that's been shown to work in dramatically lowering the numbers of abused children and the numbers of children taken into state custody, both during and after the accreditation process. So this bill would save money in the not so long run, even if it is just a few less children were placed in state custody, and it would also save lives. We took the first step toward improving protection for New Hampshire's most vulnerable children when we passed SB 86 and now it is time to finish the task before another child dies. I'd also like to add that most of the debate on this bill has centered on its fiscal note. I think that is pretty unfair given that earlier today we sent a voucher bill to the Finance Committee with a much higher fiscal note, didn't even debate it, just debated the policy coming out of the committee as we should. Shame on us. If we can't embrace the policy that this bill puts forward and send it to Finance, too. I request a roll call.

SENATOR KENNEY: Mr. President, members of the Senate, I would never, ever put a child at risk by not passing a piece of legislation that I felt that would put a child or family members at risk. But I've always taken the approach that when I come over here and I am not as knowledgeable as a commissioner, a director, or someone whose been in an agency for several years, that I rely on that knowledge. And we are talking **TAPE CHANGE** that actually came after the fact that the person came in and opposed it. Was part of the leadership of Health and Human Services and gave their reasons for not supporting the legislation. It's then at that point we looked at the fiscal note and how much it would cost. In defense of the committee, I think what we did was the right thing. I think ultimately, we as Senators cannot pass every policy bill off to the Finance Committee. We have to decide for ourselves if this is viably going to move forward based off the input that we received from the commissioners, the assistant commissioners, the directors and the other leaderships within the agencies. We have to respect their opinion and we need to rely on their opinion. I have relied on your opinion when it came to this piece of legislation. I know that New Hampshire will receive accreditation some day, but we have to proceed cautiously forward on this matter. So I thank you, Mr. President.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

SB 144-FN, relative to certified forensic counselors. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 144 inexpedient to legislate. The committee feels that this issue needs to be looked at further. The committee is not opposed to the certification of forensic counselors, but there are too many problems with the bill as it is written. The committee heard testimony from the Department of Corrections, who opposes the bill, saying that there are not enough resources and personnel to take on this task within their department. The committee asks your support for the motion of inexpedient to legislate and the committee thanks you.

Committee report of inexpedient to legislate is adopted.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 4-2. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move that Senate Bill 146 inexpedient to legislate. This bill would place a \$20 surcharge on all filing fees in the Supreme, Superior, District, Family and Probate Courts. The money collected is to go to a separate fund to be known as a Civil Legal Service Fund. This bill would create a New Hampshire legal assistance office in Nashua and possibly provide for additional staff in other New Hampshire legal assistance offices. The committee felt that this increase totaling \$680,000 in the first year on the back of the taxpayers, is the wrong approach to fund a civil legal service fund. This request should go through the legislative budget process. The ED and A Committee asks for your support on the motion of inexpedient to legislate. Thank you, Mr. President.

SENATOR FOSTER: Thank you, Mr. President. I rise in opposition to the committee report of inexpedient to legislate and would hope that it gets overturned so I could put forward a substitute motion. Nashua is the second largest city in the state and it does not have a legal assistance office. Currently, it is served from Manchester and that office also serves Salem, Concord and Laconia. It covers a huge part of the state. This bill would establish an office in Nashua, have a satellite office in Salem and

also allow for increased personnel in other parts of the state. The services that the legal assistance office provides I think are important to understand. There was testimony given at the committee and I will give some very quick numbers here. But the services these folks provide help bring in among other things, additional federal dollars into this state. We sometimes feel we don't get our fair share of federal dollars. I think a lot of that has to do, and I will say, in a good way with our tax structure. There is not as much funds to match. But this is one of the areas where we could actually increase federal dollars. Up in the north country, the record shows that from July 1, 2003 to November, 2004, \$1.2 million was brought in disability benefits for north country residents. There is a sense that we could that elsewhere around the state. And that would in turn help city welfare rolls because that is where those people fall. So it has an economic positive I think ultimately, in certain ways around the state. Yes, there would be a surcharge, but our filing fees would still be lower than a lot of other states around the country. Importantly, this legislation would not add a surcharge onto landlord tenants writs. Last time this bill came up there was some opposition. I think probably somewhat justifiably from landlords who felt that they didn't want to potentially fund folks who were opposing them in a landlord/tenant dispute. This bill has been amended to take out, to make sure those fees do not hit landlord/tenant writs. So, with that change, I think it is a much improved piece of legislation and I would ask your support. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I rise in opposition to the committee report I did attend the committee and testified there. I do remember that the first vote through was a tie vote, and it changed to 4-2. It is before us here today. This need is great, especially in Nashua. Nashua has a population that has changed dramatically. We have 20 percent of our population that is in the minority and poverty level and those people need help. Many of these people, I cannot as an attorney, even help because I can't speak with them because they have multiple languages that I am not capable of understanding. This office, in the past, they've had a record in Manchester of enlisting bilingual attorneys. They enlist people who can translate in addition to the attorneys, and they have done a wonderful job looking out for peoples needs. As Senator Foster said, Senator Attorney Foster, many of the victories that come for the benefit of New Hampshire residents, come from the assistance of New Hampshire Legal Aid and New Hampshire Legal Assistance. We are receiving much more than we are putting into this program. Our residents have received over a \$1,440,000. based on the seed money that this organization has received in the amount of around \$200 to \$250,000. It is a good opportunity to serve our citizens, especially the citizens in the Nashua area. There is a second portion of this bill that is included that talks about a pilot program, which is a sliding scale program where residents are able to be analyzed as to whether they can contribute towards these fees. I think that would be a great opportunity. As to the \$20 surcharge, I think it is a small price to pay for people who want to utilize the court system and who can support this cause. Thank you and I appreciate your support.

SENATOR HASSAN: Thank you, Mr. President. It seems that is the Senator attorneys who are rising in opposition to the inexpedient to legislate report. I want to focus the chamber for a moment on the Chief Justice's remarks to us in joint session just a short time ago. I also rise as a new appointee to the Commission on the status of the legal profession in this

state. One of the real issues that the Chief Justice talked about and we are confronting is the efficient operation of our court system. The Chief Justice spoke quite compellingly to us about the fact that, with an increase pro se litigants in our court system, our court system is finding it much more difficult to stay efficient and on task and administer justice as is its charge. I believe very strongly that supporting the Nashua office will ease some of that problem of pro se litigants in our courts and I support this effort for that reason. Thank you.

SENATOR KENNEY: If I could speak for the last time. I'm not an attorney like the last three speakers, but I just wanted to point that out. But I can read statistics. In the committee, I was that third person that held it up because I wanted a little bit more facts, a little bit more understanding of what we are doing in our court systems and what the New Hampshire Legal Assistance...what type of case work they're doing. Where statistically these things are happening around the state. But I know in my area, if you take out Milton and Farmington, there has been roughly maybe 110 – 120 cases that have been where the New Hampshire Legal Assistance has provided again, assistance. That's very low. It's an extremely underserved area. So when I go back to my constituency, and I say to them, you are going to have to pay an additional \$20 to support what's going on in Nashua and other places around the state, I have to question that, because we are underserved. And when I look at additionally what the fees are now, the Supreme and Superior Courts are \$145. So now, for my constituency, it will be \$165. The District Courts are \$95. So my constituency now it's going to be \$115. And then the Probate Courts range between \$50-\$150. But when we originally, in 1997, opened up the offices in the north country in Littleton and the satellite office in Berlin, we did that through the state budget process. We didn't go back to the taxpayer and say we are going to increase the filing fee on you and you might get the service or you might not. I have a tremendous respect for New Hampshire Legal Assistance Program and what they do. There are too few of those attorneys that are out there. They are dedicated attorneys. They do as much yeoman's work as they can. My area is underserved and that's why I can't support this bill.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I want to be brief. You know this is a case again that we are all in this together. We just built that magnificent new courthouse up in Carroll County. It's a beautiful place. I love it. I love that place. I remember the old courthouse, it was kind of a dumpy thing. I used to walk in there every once in a while. You know, I lived up in Carroll County when it was underserved. But a lot of the people live in the southern part of the state and they are underserved. And pro se litigation clogs the courts. It clogs the courts so we are not delivering justice in an efficient and an effective manner. This situation, with the surcharge, enhances the situation that is going nowhere at the present time and it serves people who need that help. Now I can tell you that the district court in Manchester is loaded. I sit in the back of that district court and listen to some of those cases. They are extraordinary cases believe me. I am sure in Nashua it's the same way. So this is a good piece of legislation that does something positive. Again, we are all in this together. We all want proper legal assistance when that legal assistance is required. So think about that. Legal assistance, something we need, something that constitutionally we are guaranteed, and this is an opportunity to fulfill that guarantee. Thank you, Mr. President.

SENATOR GATSAS: Senator Foster, I noticed that starting on line 16 that there is a new program.

SENATOR FOSTER: Yes.

SENATOR GATSAS: I have a problem with new programs when we start assessing fees trying to alleviate some of the pressure in Manchester where the court...with the legal assistance program in Nashua. If this bill were to move forward, would you be opposed to take out that working...the pilot project to find out first how we can alleviate the problems that we currently have with the pressure that is there?

SENATOR FOSTER: I wouldn't oppose that. I think the important part of the bill is the first project. The pilot project is an idea as David said to try to serve a broader group of people, but I think the important part is the first part of the legislation.

SENATOR GATSAS: So, is it my understanding that if we overturn the ITL motion, that you will get an amendment prepared to take that portion out?

SENATOR FOSTER: I think I would like to see the legislation go forward as it is and if folks have concerns about that I suppose. Is this going to Finance? I don't know. It's not going to Finance. I think both parts are important. I think the first part is the more important part to me, but I think the other part actually will be able to serve other constituencies further in the state, including Senator Kenney's others around the state. It is a pilot program. I believe they are reporting as it comes back a year later November 1, 2006 or some day along those ways to see whether it is working. Whether it is meeting the results that they wanted to have, so it is not a permanent program.

SENATOR GATSAS: There is nothing in here that says that that \$20 surcharge doesn't go to this pilot program or all of it.

SENATOR FOSTER: I don't think all of it could go there, Senator, because I think that they're opening up a new office in Nashua and staffing it. That's where I think primary dollars are going. They are also putting some other personnel around the state. I think the idea of the sliding scale would be that these folks would pay some fee so there would actually be revenue coming in from serving those folks as well as them being served. I don't see how most of that filing fee could go to that program.

SENATOR GATSAS: Would you believe that unless I see what that sliding fee in legislation would be, not the sliding fee, but the amount that would be going to this new program, out of that \$20, that I might be a little apprehensive to overturn that inexpedient to legislate?

SENATOR FOSTER: I understand that you might feel that way.

SENATOR GATSAS: Thank you.

SENATOR FOSTER: Thank you.

SENATOR FULLER CLARK: Senator D'Allesandro, we heard from Senator Kenney that his area was underserved by legal assistance. It is my understanding that the Manchester office is reaching down into Nashua and all the way up into Laconia at this given time, and that, without an expansion of services, because of the heavy caseload in Manchester, that they currently don't have the ability to serve such areas as Senator Kenney's region. By passing this legislation, do you think that it would then relieve some of the pressure on Manchester so that we would be able to reach out and extend these much needed services to other areas in the state?

SENATOR D'ALLESANDRO: Thank you for the question. It appears that that is the case. Yes.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Kenney.

Seconded by Senator Green.

The following Senators voted Yes: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Bragdon, Barnes.

The following Senators voted No: Gallus, Burling, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, Gatsas, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Motion failed.

Senator Foster moved ought to pass.

SENATOR GATSAS: Thank you, Mr. President. Senator Foster, can we lay this on the table and get an amendment to correct the second portion of this bill so that all the funding or the majority portion of the funding doesn't go to this new project, and that the pressure is alleviated from the places we are looking to alleviate?

SENATOR FOSTER: The more that I have looked at this bill, I think it is very clear that the funds are going to be going for the intended purposes that I described to the city of Nashua as well as to provide additional staff in Manchester, Claremont, Portsmouth and Littleton. I think it's clear in the first part of the bill. The second part is a pilot program. They are going to experiment with it. I have no indication whatsoever that's where the lion's share of the funds are going so I think the legislation is sound as it is.

SENATOR GATSAS: The fiscal note says that there is going to be about \$679,000 that's going to be raised from the surcharge. There's nothing in here that tells me how much is going to be allocated to the things that we believe should have assistance. So, my question to you is, again, to support your ought to pass motion, for this Senator to feel, to have a comfort level, that those people in Manchester are going to be served, will you take a look at how we can appropriate those funds so that a new program doesn't get more money?

SENATOR FOSTER: Senator, I think I am comfortable with the way it does read. By the way, the pilot program that we are talking about is 250 percent of poverty level. Earlier on today, this body passed a bill with 300 percent poverty level in the education concept to assist those folks to get certificates, I guess we called them, tuition certificates to go to school. These are quite low income people. Having sat on the Judiciary Committee now for my third year, I think the idea of the pilot program is sound. These are pro se litigants; they can't afford legal counsel. What this is, is to bring people in who will maybe have to pay a fee, but a much reduced fee. I think it is a sound piece of legislation, and I have no indication in any event that that is where the lion's share of these funds are going.

SENATOR BARNES: Senator Foster, a vote for this bill is a vote for raising a \$20 fee. Is that correct?

SENATOR FOSTER: A vote for this bill will...

SENATOR BARNES: If we vote for this bill, we are voting for a \$20 increase in the fee, right?

SENATOR FOSTER: A filing fee in certain courts. Yes.

SENATOR BARNES: A vote yes is increasing the fee. That's all I wanted to know. Thank you, Senator Foster.

SENATOR KENNEY: Senator Foster, thank you. It is my understanding that the first \$350,000 is going to go to Nashua to set up this legal assistance office. Is that true?

SENATOR FOSTER: I think that's what I recall the number being.

SENATOR KENNEY: When we were in committee and we received a breakdown from that office, the total ongoing cost would be roughly \$260,000. So I see about \$271,000 in the first year. So I see roughly \$80,000 that is really not accountable for, and I am just wondering where is that going to go?

SENATOR FOSTER: My understanding is that it is going to be used to add additional personnel in some of the other offices that already exist as well as the satellite office in Salem, which doesn't have one. That is my understanding.

SENATOR KENNEY: Again, Salem, they broke down a cost item of \$45,000. So again, you might be correct in that that money might be splinted off, but it is not overly clear.

SENATOR FOSTER: In addition, on 10 and 11 of the bill it says "to provide additional attorneys, paralegals, or both, to the staff of the New Hampshire Legal Assistance offices in Manchester, Claremont, Portsmouth, and Littleton." So I am assuming that's where the excess goes. In other words, they are establishing an office and increasing some of the services in other parts of the state.

SENATOR KENNEY: If you would believe that the first \$350,000, I've got to believe that the way it's written it is going to go to Nashua.

SENATOR FOSTER: If you tell me that I would believe you. My understanding is that it is to establish the office and the additional funds are going elsewhere.

SENATOR KENNEY: Thank you.

The question is on the motion ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Burling, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Green, Flanders, Roberge, Bragdon, Gatsas, Barnes, Martel.

Yeas: 14 - Nays: 10

Adopted.

Referred to the Finance Committee (Rule #26).

SB 154-FN, relative to costs of criminal and motor vehicle records checks required for employment. Executive Departments and Administration Committee. Inexpedient to legislate, Vote 5-1. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 154 inexpedient to legislate. Federal and state laws are increasingly requiring job applicants for various occupations to have a criminal and/or motor vehicle records check. This bill would have allowed the employer to charge the applicant for the cost of the records check. The committee feels that this would be too heavy of a burden to place on applicants, the reason simply being that low income persons looking for a job would not be able to pay the fee each time they apply for a position. The cost of these fees should be allotted into the employer's budget and not placed onto the applicant. The Executive Departments and Administration Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

SB 49-FN, including multiple sclerosis in the catastrophic illness program. Finance Committee. Ought to pass, Vote 5-1. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 49 ought to pass. By including multiple sclerosis in the catastrophic illness program, those that suffer with this disease and meet the income requirements in this program, will have assistance in paying for expensive treatments that are not currently covered. The Finance Committee asks your support for the motion of ought to pass.

Adopted.

Ordered to third reading.

SB 62-FN, allowing court fees to be paid by credit card. Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

Senate Finance
March 15, 2005
2005-0624s
09/01

Amendment to SB 62-FN

Amend RSA 490:26-a as inserted by section 2 of the bill by replacing it with the following:

490:26-a Court Fees *and Fines; Credit Card Payments*. The supreme court shall establish by rule an equitable fee schedule for all courts in the state [by January 1, 1982]. *All court fees and all fines paid into any court may be paid by credit card in lieu of cash payment. The courts shall collect a \$5 processing fee in addition to each fee or fine paid by credit card.*

2005-0624s

AMENDED ANALYSIS

This bill allows court fees and fines paid into any court to be paid by credit card. A \$5 processing fee is added to each fee or fine paid by credit card.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 62-FN ought to pass with amendment. The bill gives the courts the ability to receive fees and fines by way of credit card. The committee amendment assesses a \$5 processing fee for each fine paid for by credit card. This allows for the transaction cost to be paid for by the user in-

stead of the state. The Finance Committee voted unanimously that this bill ought to pass with amendment and we ask your support. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 93-FN, transferring the electricians board to the department of safety. Finance Committee. Ought to pass with amendment, Vote 6-1. Senator Morse for the committee.

Senate Finance

March 15, 2005

2005-0619s

08/01

Amendment to SB 93-FN

Amend the bill by replacing section 5 with the following:

5 Electricians; Fees. Amend RSA 319-C:6-b to read as follows:

319-C:6-b Fees. The board, *with the approval of the commissioner of safety*, shall establish fees for examination of applicants, for licensure, for renewal, and for late renewal of licenses to practice under this chapter, and for transcribing and transferring records and other services. The fees established by the board shall be sufficient to produce estimated revenues equal to 125 percent of the direct operating expenses of the board for the previous fiscal year. *Fees collected shall be deposited in the fire standards and training and emergency medical services fund, established in RSA 21-P:12-d, and used for the purposes of operating expenses of the electricians' board. Fees collected in excess of actual operating expenses shall be deposited in the general fund as unrestricted revenue.*

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 93-FN ought to pass with amendment. Transferring the Electricians' Licensing Board will allow them to share resources and staff with the Department of Safety, allowing them to operate in a more efficient manner. The committee amendment cleans up language in the bill and also allows for fees in excess of actual operating expenses to be deposited in general funds. The Finance Committee asks your support for the motion of ought to pass with amendment.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 108-FN, relative to newborn screening tests and fees for newborn screening tests. Finance Committee. Ought to pass, Vote 6-1. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 108-FN ought to pass. Newborn screening has been a successful practice in this state since the 1960s. Every year approximately 3,000 babies with severe disorders are detected through newborn screening programs. Undiagnosed and untreated disorders can result in mental retardation, illness and death. This legislation will include additional tests as part of

newborn screening and revise outdated requirements allowing HHS to rapidly respond to new medical advances and to the public's demands for important preventative services. Newborn screening is a cost effective for the state because severe mental retardation from untreated disorders could potentially cost the state millions. This legislation will save lives and reduce disabilities, ensuring that babies in New Hampshire grow up healthy. This legislation has no net impact on general funds. The Finance Committee asks your support for the motion of ought to pass.

Adopted.

Ordered to third reading.

SB 113-FN, relative to the use of federal funds for technology improvements within the department of employment security. Finance Committee. Ought to pass, Vote 7-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 113 ought to pass. This legislation allows the Department of Employment Security to access \$11.9 million in federal funds for the purpose of developing and implementing a new automated unemployment compensation benefit system. Currently, the department may use as many as four programs on a claimant's case. An update will allow for more efficiency and provide a faster turn around time, benefiting both the claimant and the employee, while also serving as a cost saving measure for the department. There will be no expenditures from the general funds for the administrative cost of the upgrades as this comes from federal funding. The Finance Committee asks your support for the motion of ought to pass.

SENATOR BARNES: Thank you, Mr. President. Senator Larsen, on line 4, "the sum of \$11,900,000 or so much thereof." Does that mean...my understanding of it is "up to". That could have said "up to" couldn't it? My understanding is that it is going to be a heck of a lot less than that amount of money. A sum of \$11,900,000 or so much thereof. That really means up to. Right?

SENATOR LARSEN: That means "up to". They can expend as much as may be necessary to implement the new automated system.

SENATOR BARNES: Would you believe that I like better "up to"? It is a littler clearer to me.

SENATOR LARSEN: It may be your preference in words, and that may have been clear, but that's the way the drafter has prepared it and it seems to work.

SENATOR BARNES: That's what it means. That's all I wanted to know. Thank you very much, Senator.

Adopted.

Ordered to third reading.

MOTION TO TAKE OFF THE TABLE

Senator Flanders moved to have SB 180-FN taken off the table.

Adopted.

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs. Transportation and Interstate Cooperation Committee. Inexpedient to legislate. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you. Last week we placed this on the table because I said I needed more time. I am going to ask that you defeat the ITL motion so that we can pass this motion. If I may give the history now. By researching this further, I find that, in 2002 a bill was passed which is an interesting bill, which created the Local Government Records Management Improvement Fund known as LGRMIP. And, in this fund, it was unfunded. No money was ever put to it. What it basically does is it sets up a fund under vital statistics where a person can be hired after the money has come in, and we, under the legislation, have made the state responsible to help the towns keep their records. What's happening in some of these towns is that these old records in the corner of this and that and they are mildewing and so forth, and would need some help. Last year, the town clerks put a bill in and we passed it through the Senate, but it mandated that every town and city take a dollar out. The House said "we are not going to approve this". They defeated it and told them to come back. This legislation, they were talking about today is enabling. What it does is it allows the town to vote, or the city to vote, to take one dollar out of their portion, add one dollar to the town portion of the registration fee. Fifty cents of it stays with the town, in a fund, for records. Fifty cents comes to the state. When this is fully funded, a person will be hired to assist the towns of what records to keep. Towns don't know what to keep and what not to keep and they don't know how to preserve some of the things. I think this is an important piece of legislation, having a hobby of collecting old Antrim items and so forth. I think this is something that we should look at. I ask you to defeat the ITL and consider ought to pass. Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator Flanders, did I understand you correctly saying that a dollar is taken out and fifty cents stays in the town and fifty cents comes to the state?

SENATOR FLANDERS: Yes.

SENATOR GATSAS: Where does that fifty cents go that comes to the state?

SENATOR FLANDERS: It goes into the Local Government Records Management Improvement Program, LGRMIP.

SENATOR GATSAS: I just wanted to hear you say that again.

SENATOR FLANDERS: It goes into the vital statistics portion, into a fund, to fund just town records. It won't be used for state records, it's strictly a town program.

SENATOR GATSAS: I am a little confused because I go to page two and it says for preparation of the forms right here..."the town clerk shall receive a fee of \$2 for each application received. Fifty cents of this amount will be used to support the records management."

SENATOR FLANDER: They already receive a dollar in legislation that we passed in 1983. The first legislation was passed in 1983 and that's one dollar. That's RSA 261:52. That went into the general fund of the town. This bill, 180, says fifty cents stays in a fund in the town just for records, and fifty cents comes to the state. Let me give you an example of what happens. I will use Nashua. Nashua registers about 100,000 cars. So that is \$100,000 right into the general fund. The powers that be in Nashua felt and gave back to the clerk, \$3,500 for their records. This is why they want this legislation. They will have the fifty cents that will stay in their fund for the records. The 1983 legislation was mandatory so every town is doing it.

SENATOR LETOURNEAU: Thank you, Mr. President. I rise in opposition to this motion. I voted against the committee and I am going to vote against it again today. Last year the legislature passed some legislation that allowed the cities and towns to add money onto registrations. My town adopted a \$5 fee on every single registration in our town in order to fix the roads in the town, which is appropriate under Article VI-a. This is not. This is a violation of Article VI-a of our Constitution and I cannot support it. Thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President. First to Senator Flanders, I appreciate your due diligence because this thing has been around for two cycles now. The clarity that you manifested, I think, helps us in understanding it. This is not mandatory, Senator Letourneau. If your town doesn't want to do it, they don't have to do it. But we are stressing good records management. That's really been something that we have been emphasizing. Vital statistics, record management and doing that in a proper fashion. Our cities and towns have been gearing up to do this. This dollar allows for that to happen and it is something that we want. I mean we as a legislature want quality records. We want people to access quality records and we've, in essence, mandated this. So this is just a way to get what we have asked for accomplished. As we say, it is permissive. If you don't want to do it, you don't have to do it. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. I hadn't planned to speak but maybe this will be an opportunity where I speak on something today where it's on the prevailing side. I was the only member of the committee to vote against the ITL on this bill. I did so for the very point that Senator Flanders and Senator D'Allesandro have raised. It is simply enabling and it requires the vote of the legislative body at the local level. We made it very difficult for the local folks to get the funds that they need to do the jobs we call on them for. If they want to vote at the local level to do that, I didn't see any reason we shouldn't at least allow them to take that vote. So I would also urge you to over turn the ITL.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Johnson, Kenney, Boyce, Roberge, Clegg, Barnes, Letourneau, Morse.

The following Senators voted No: Gallus, Burling, Green, Flanders, Odell, Eaton, Bragdon, Gottesman, Foster, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Motion failed.

Senator Flanders moved ought to pass.

SENATOR MORSE: Senator Flanders, like Senator Gatsas, I understand what's been highlighted in the back here, and it is short a buck. It basically says you're going to collect two dollars and distribute fifty cents and fifty cents, and then if I go back to paragraph one, it explains the dollar. I guess, is this basically a \$1.50 is going to stay locally and fifty cents is going to come up to the state?

SENATOR FLANDERS: In 1983 under 261:52, this body passed, and the Governor signed, that one dollar for each application will be taken out. That is being done. It's been done since 1983. What this bill does is add one dollar to it. Now out of that dollar they are going to put fifty cents in a fund, at the town level, for records, and they are going to send fifty cents to the Vital Statistics in Concord. So it doesn't raise two dollars, it raises one dollar.

SENATOR MORSE: Senator, do you believe that is clear that we are not adding...I mean, obviously we are giving them the option, but do you believe it is clear that we are not adding two dollars to that one dollar?

SENATOR FLANDERS: Yes, I believe it is. Yes sir.

SENATOR BURLING: Mr. President. I haven't one thing to offer to this debate it's been so well stated. In my town of Cornish, we have been actually creating a capital reserve fund for this purpose over the last five years. We pay for it, of course, with the property tax, which is what we pay for everything with. One of the nice things about this bill, and the reason I am going to vote for it is, it allows the citizens in Cornish an alternative methodology for raising the money. That of itself is worth the effort. I hope you will join me in voting to pass this bill.

SENATOR KENNEY: Senator Flanders, **TAPE CHANGE** program each year to preserve at least one record each year. When we go ahead and ask for two dollars, fifty cents goes back into that fund. But, if a community chooses not to use that fifty cents, okay, out of that two dollars that is collected, that goes into someone else's fund or that is distributed around the state or how does that work?

SENATOR FLANDERS: Fifty cents is for cities and towns stays in the towns. If your town votes it, a fund will be set up and fifty cents for each registration will go into that fund and it stays right there. The other fifty cents comes into the achieves. When that fund is raised to a point, a person will be hired to assist. So the town clerk can call in and say what do I do with this? To help people. I mean, you may be saving things you don't need to save. I don't know that. But I am sure that a lot of towns need help in what to save and what they can get rid of. That is what this basically does.

SENATOR KENNEY: And, this fund is created through town meeting or is it just created already?

SENATOR FLANDERS: Town meeting. There would be an article. If it's enabling legislation, there would be an article and warrant and people would vote it up or down, and in the cities the mayor and alderman will vote whether they will do it or not.

SENATOR KENNEY: Okay. I appreciate that. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Flanders, two quick things. I think there is a little confusion on the money. What you are trying to do, what we are all going to hopefully vote for, is fifty cents is going to stay in the town if the town or cities decide to do that. Is that correct?

SENATOR FLANDERS: That's correct.

SENATOR BARNES: It's fifty cents. In 1983 it was a buck and it came up to the state.

SENATOR FLANDERS: No. The buck stayed in the town.

SENATOR BARNES: Okay, so the town has a \$1.50.

SENATOR FLANDERS: The buck went back to the town.

SENATOR BARNES: So the town gets a buck and a half if they decide to vote on it. They get a buck now and they get another fifty cents if we vote for it.

SENATOR FLANDERS: The fifty cents is going to go into the fund, the dollar does not.

SENATOR BARNES: Okay. Thank you. The second thing. This is an ideal local control piece of legislation. Am I correct?

SENATOR FLANDERS: I thought so.

SENATOR BARNES: Thank you very much. It's a vote for the towns and the cities. Thank you.

SENATOR FLANDERS: This is a dollar. Remember that.

SENATOR LETOURNEAU: Thank you, Senator Flanders, I appreciate it. You stated in your testimony to us that this money is going to go into the general fund in the towns.

SENATOR FLANDERS: I will do it one more time.

SENATOR LETOURNEAU: One more time.

SENATOR FLANDERS: In 1983 they passed legislation...

SENATOR LETOURNEAU: I know all that.

SENATOR FLANDERS: and a dollar went into the general fund.

SENATOR LETOURNEAU: Right.

SENATOR FLANDERS: In the town.

SENATOR LETOURNEAU: Right.

SENATOR FLANDERS: Two years ago we passed legislation to create a position at the state level, unfunded. 180 passes one dollar. Fifty cents stays in the town in a fund for records. Fifty cents comes to fund what we passed in 2002.

SENATOR LETOURNEAU: Now that we know all of that. How does that reconcile when Article VI-a of the constitution says that "no money shall be used for other than highway funds"?

SENATOR FLANDERS: Because it is the town's share, not the state's share. Wait a minute. When you go in, you pay a registration to the town, that has nothing to do with the Constitution. I agree, if we were trying to take it out of the state's portion of it, it would be a highway fund which is sacred. But this is not sacred money, this is town money that is "added to", not "take away", but "added to".

SENATOR LETOURNEAU: So the town tax portion of the bill?

SENATOR FLANDERS: The town tax portion of the bill.

SENATOR LETOURNEAU: Thank you, Senator Flanders.

SENATOR D'ALLESANDRO: I am very pleased on a holy Thursday that we are talking about sacred items. There is a certain sacrosanct nature of the conversation. Thank you.

SENATOR BOYCE: I also rise to talk about the constitutionality of this. We just heard said that because this is town taxation, it somehow doesn't

apply to the Constitution; however, I don't think that the Constitution says that the towns are not part of the state. I believe it says that the towns are a subdivision of the state; therefore, I believe the Constitution does apply to them. Be that as it may, this fund, this local records management fund, I can't remember the letters that were applied to this, but this fund applies to all local records, which I believe are things like dog licenses and other things that are kept by the town and are not specifically motor vehicle related. So this fifty cents that goes to the state to this fund, which I don't think anybody can contend is not a state fund because it's being sent to the state, that fifty cents is then made available to towns that want to digitize their dog licenses. That is not a highway purpose. I don't know how you can stretch Article VI-A to say that digitizing dog licenses might somehow be part of the highway construction and maintenance in this state. I could see how you could stretch it to say to maintain the records in the town of motor vehicle registrations could somehow be related, because those are motor vehicle registrations which are related to motor vehicles, therefore that would be okay. But, since this is not restricted, this fund is not restricted only to local highway related records, it applies to all records, I believe this is unconstitutional on its face. I believe it's unconstitutional on both halves of the fifty cents, but certainly the half that goes to the state. Therefore, I have to vote against this. Thank you.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Boyce, Clegg, Letourneau, Morse.

Yeas: 20 - Nays: 4

Adopted.

Ordered to third reading.

SB 115-FN, relative to the transfer of responsibility for asbestos-related issues from the department of health and human services to the department of environmental services. Finance Committee. Ought to pass, Vote 7-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 115 ought to pass. Senate Bill 115 makes corrections to the statutes in response to the transfer of responsibility for the asbestos program from Health and Human Services to the Department of Environmental Services last year. The bill makes technical corrections, updates the Advisory Committee and clarifies the authority over collection of fines. The legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years '05 to '09. The Finance Committee voted unanimously for the motion of ought to pass and we ask for your support. Thank you.

Adopted.

Ordered to third reading.

SB 181-FN-A, making an appropriation to the postsecondary education commission for the purpose of the New Hampshire incentive program. Finance Committee. Inexpedient to legislate, Vote 4-3. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 181 inexpedient to legislate. In Senate Bill 181 the Postsecondary Education Commission requests an appropriation of \$3.1 million dollars in '06 and in '07 to provide additional grants for the New Hampshire Incentive Program. The committee carefully considered this legislation but felt that proper place to have the discussion on additional funding for grants awarded by the Postsecondary Commission is during the debate on the budget. This provides a more complete picture of expenses from the general funds. This motion is not against the policy but against legislative specials. Please support the committee's recommendation of inexpedient to legislate.

SENATOR ODELL: Thank you, Mr. President. As the prime sponsor of this legislation, I wanted to just express my appreciation to Senator Morse and my colleagues on the Senate Finance Committee for the opportunity to present the case on behalf of this legislation. It's important. It's an investment in our young people. It's as important as it is to invest in our highways and our physical plant. It's important to invest in the future of our economy through the scholarships. But I also recognize that Senator Morse has been fair, he has been complete, in terms of his...and consistent, in avoiding these legislative specials and so I will agree with him and support him today. But I do want the members of the Senate to know that I am deeply committed to increasing the amount of money that we are putting into scholarships for young people in the state of New Hampshire.

SENATOR FULLER CLARK: Thank you, Mr. President. Mr. President, I rise in support of the public policy of increasing scholarship assistance for low income New Hampshire students in the 2005 legislative session. At the very time economists are proclaiming that the best jobs and the highest incomes in the future will belong to those who are highly skilled and who have the most education and training, New Hampshire continually ranks near the bottom among states in per capita expenditures for higher education and financial assistance to our students. In 2002 New Hampshire provided only \$2.96 per capita in total state funded grant aid compared to a national average of \$19.89. Similarly, in 2002, New Hampshire provided only \$68.25 in need based aid for undergraduate enrollment compared to a national average of \$354.32. New Hampshire ranks third highest in tuition and fees at comprehensive state colleges and universities and yet 49th in state funded scholarship aid and Pell Grants; thus, not only is higher education in New Hampshire among the most expensive in the nation, but the state does little to help the students at either the public or private colleges and universities to help finance their higher education. Clearly, scholarship funding in this state is inadequate and must be addressed if New Hampshire hopes to build a workforce in an economy based on highly skilled knowledgeable workers. I support the efforts of Senator Odell and his colleagues on the Senate Finance Committee to promote a Senate policy of increasing funding for the New Hampshire Incentive Grant Program during Senate budget deliberations. I urge you to join in supporting this important Senate policy and hope we can all commit to dealing with this issue in the budget process. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, want to thank Senator Morse who said this should be included in the budget

package. I think he's correct, and legislators specials do become problematic and we get involved in legislator specials. But I think that my colleagues should understand the gravity of the situation. We talk about the Pell Grant. Do you know that the Pell Grant is? The Pell Grant was called "A basic educational opportunity grant." It was the BEOG. That's how it was funded when it came down from the federal government. In the state of New Hampshire, we have 14,000 students who receive Pell Grants. Now how do you receive a Pell Grant? If you have a family with an income of \$35,000 or less, you get a Pell Grant. The maximum Pell Grant is \$4,050 and \$4,050 won't take you far in terms of a college education. When you talk about basic educational costs at a public institution is almost \$20,000; at a private institution, it is \$40,000. So the fact that we do have needy students, the fact that the state wants to make an investment in those students, I think has been manifested by this legislature. The question is, do we have the financial resources or will we attain or create the financial resources to support this scholarship program? That's going to happen in Finance, and hopefully, we will be able to do that. But I think the policy has to be quite clear that we want to support needy students and we want to do our best to support them. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I was here in 1998 when we last increased this fund and we did it in a bipartisan way with, I remember, Senator Jim Rubens sitting there, working with him. Once again, it's time for us to look at this fund. I think the Finance Committee did in fact acknowledge that we would work on this in the budget. I just rise to urge the whole group to consider some of the facts that you probably are aware of, but just to remind you that the average incentive grant is \$1,000 going to students who stay in New Hampshire for college, \$500 if you go out-of-state to other New England colleges. Two out of three jobs in our nation are going to require a college education and yet we have no county in New Hampshire with two out of three graduates going on to college. The post secondary commission estimates over 42 percent of New Hampshire state residents seeking financial assistance cannot cover the average cost for full time tuition at our colleges. Our community technical colleges and students attending full time at one of those colleges is expected to pay over \$5,000 a year for tuition. Equally inadequate or scholarship funds. I know that...I urge my colleagues in the Senate to support the policy of increasing need based scholarship funding and encourage you to make it a Senate position to increase this funding as we consider the budget. I think we heard that in committee and I hope that the full Senate will in fact work to make that happen when the budget comes to us. Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. Senator D'Allesandro, isn't it true that Pell Grants are really grants that our students get while they are going to college, but they are repayable once they get out of college? Is that correct?

SENATOR D'ALLESANDRO: No, Senator. You don't have to repay the Pell Grant. Pell Grant is a grant; it is an outright grant. What they have to pay is the Guaranteed Student Loan. The GSL, the Guaranteed Student Loan is paid for when you graduate.

SENATOR MARTEL: Alright. Thank you.

SENATOR GREEN: Senator Odell, if I want to support this in policy, is there any way I can support this in policy and vote against this bill?

SENATOR ODELL: If you want to support it in policy, you would want to vote for this bill, but given the consideration that Senator Morse has offered, that it be considered in the budget process, you would vote against the ITL.

SENATOR GREEN: I don't question Senator Morse being willing to present it, but how do I know that this is going to be a major priority of the Finance Committee as you go through the budget?

SENATOR ODELL: Thank you for that question. I have the assurance of Senator Morse that it will be. He's been consistent in that. Secondly, I think that you heard Senator Larsen speak, a member of the Senate Finance Committee. I think you heard Senator D'Alessandro speak, a member of the Finance Committee. I think that all of us share this concern, and I think that you will find that this will have a high priority with a number of the members of the Finance Committee.

SENATOR GREEN: Was any consideration given to putting a \$1 on this so that we could all vote for the policy and let you people deal with the finances, so we would have on record, a policy of this body, that we support increasing this scholarship of funds available?

SENATOR ODELL: My recall is that that was discussed Senator Green, and that there was a vote to consider the legislation ITL and that's the motion that is on the floor.

SENATOR GREEN: Do you support the motion of ITL on this bill?

SENATOR ODELL: I am supporting the commitment that I have from Senator Morse, the Chairman of the Finance Committee and others, that we will take this up and it will be a high priority with the committee.

SENATOR GREEN: Thank you.

SENATOR MORSE: Thank you, Mr. President. Senator Green actually taught me what I've been doing in Finance, because I went to him at the beginning of the session and I said, "How do you handle everything that the Senate wants" and he said, "I keep a list and I bring it out in the budget session and I talk about it." My promise to the committee members was that, if we could live without putting specials behind us all the time in committee, I will keep the list. I promised that to them. I know certain members of this committee are very fond of this piece of legislation as some are with CAD ED and I think those discussions are going to come up. I can assure you that they will be there as they voiced an opinion this morning, this afternoon. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 34-FN, relative to reimbursement rates for child care. Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Martel for the committee.

Health and Human Services

March 16, 2005

2005-0697s

05/09

Amendment to SB 34-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose. The general court hereby finds that an essential component of Temporary Assistance to Needy Families (TANF) is ensuring that parents of young children have access to safe, affordable child care. To en-

able low and moderate income parents who need child care to work, attend school and job training programs, and otherwise meet public assistance eligibility requirements, the department of health and human services shall establish reimbursement rates for child care services that better reflect the current market rate for licensed child care.

2 New Section; Public Assistance; Reimbursement Rates for Child Care. Amend RSA 167 by inserting after section 3-e the following new section: 167:3-f Reimbursement Rates for Child Care.

I. The commissioner of health and human services shall establish by rule under RSA 541-A reimbursement rates for child care under the state public assistance program. To the extent that federal funds are available through the Temporary Assistance for Needy Families (TANF) or the Child Care and Development Block Grant (CCDBG) programs or from other federal sources, the rates shall reflect the current market rate for such services, based on the following criteria:

(a) Effective July 1, 2005, rates for child care reimbursement shall equal the 50th percentile of the market rate as measured by the survey of weekly costs of licensed child care centers conducted on behalf of the department in 2004. Rates for license-exempt providers may be established separately from this provision.

(b) Effective July 1, 2006, rates for child care reimbursement shall equal the 75th percentile of the market rate as measured by the survey of weekly costs of licensed child care centers conducted on behalf of the department in 2004. Rates for license-exempt providers may be established separately from this provision.

(c) To determine the current market rate in subsequent years, on or before October 1, 2005 and every 2 years thereafter, the department of health and human services shall conduct a survey of the weekly cost of licensed child care centers and licensed child care homes. The survey may be based upon a valid statistical sample of all licensed child care providers in the state.

(d) Effective July 1, 2007, the base reimbursement rate for child care shall equal the 75th percentile of the market rate for licensed child care, as measured by the survey conducted under subparagraph (c). The department shall develop a sliding scale to adjust the base reimbursement rate based on the type of child care provider, family size, income, and such additional eligibility criteria as the department may establish.

II. No more than 20 percent of the total federal TANF funds received annually by the state may be used for the child care reimbursement rate increases required by this section.

III. In order to expand the accessibility and availability of quality child care, the department also may establish, by rule under RSA 541-A, alternative or incentive reimbursement rates for quality enhancements to traditional child care services, innovative or specialized child care, and alternative child care delivery systems. The department shall maintain and expand a system of agreements with child care centers participating in the child care public assistance program. Rates for such agreements shall reflect the additional administrative costs assumed by such providers.

3 Effective Date. This act shall take effect 60 days after its passage.

2005-0697s

AMENDED ANALYSIS

This bill requires state public assistance programs to include reimbursement for child care based on the current market rate for such services.

SENATOR MARTEL: Thank you very much, Mr. President. I move Senate Bill 34-FN ought to pass with amendment. The bill as amended provides the Department of Health and Human Services with the authority to set childcare reimbursement rates according to certain criteria, such as market rates. Childcare reimbursement rates have not increased in five years and this bill will take advantage of federal law which allows states to transfer 30% of TANF funds to childcare. The amendment clarifies that TANF funds are the source of the reimbursement increase to the extent that TANF funds are available. The committee recommends ought to pass with amendment on Senate Bill 34 and I thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. I would just like to reiterate Senator Martel's support for the ought to pass with amendment. This bill has been back to committee twice. Both times the committee came out with a favorable ought to pass recommendation. Obviously, the committee feels strongly that this is policy that needs to go forward and I hope you will support the committee.

MOTION TO TABLE

Senator Morse moved to have SB 34-FN laid on the table.

Recess.

Out of recess.

The question is on the motion to table.

A roll call was requested by Senator Estabrook.

Seconded by Senator Burling.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Letourneau, Morse.

The following Senators voted No: Gallus, Burling, Green, Gottesman, Foster, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 12 - Nays: 12

Motion failed.

The question is on the adoption of the committee amendment.

A roll call was requested.

Recess.

Out of recess.

Senator Clegg withdrew his request for a roll call.

The question is on the adoption of the committee amendment.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 101-FN, relative to residential placements for certain disabled individuals between the ages of 18 and 21. Health and Human Services Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

Health and Human Services**March 16, 2005**

2005-0699s

05/09

Amendment to SB 101-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to developmentally disabled services for persons under 21 years of age.

Amend the bill by replacing section 1 with the following:

1 New Section; Services for Persons Under 21 Years of Age. Amend RSA 171-A by inserting after section 12 the following new section:

171-A:12-a Services for Persons Under 21 Years of Age. Any person under 21 years of age, who has a developmental disability, as defined under RSA 171-A:2, V, as determined by the area agency in accordance with RSA 171-A:6, II and III, shall have the same right as a person 21 years of age or older to receive services, in the least restrictive environment, pursuant to an individual service agreement under RSA 171-A:12. Under no circumstances shall the department or area agency be responsible for special education services under RSA 186-C.

2005-0699s**AMENDED ANALYSIS**

This bill clarifies that a person under 21 years of age who has a developmental disability shall have the same right to services as a person 21 years of age or older.

The bill also makes a technical correction to existing law by removing a misplaced subdivision heading relative to "restraint and seclusion" and inserting it in the appropriate statutory section.

SENATOR ESTABROOK: Thank you, Mr. President. I move Senate Bill 101 ought to pass with amendment and I am going to set aside the formal committee remarks to explain why I feel that it's appropriate despite what many of you have seen as a very large fiscal note earlier today. The bill, as it was originally introduced to committee, it dealt with the subject of 18-21 year olds who are developmentally disabled and develop a need for residential placement between the ages of 18 and 21. This came about from a constituent's case last session where her 18 year old son had no way to even have a chance to receive services because under 18, DCYF is responsible, over 21 people go on the wait list, but between 18 and 21, if your school district doesn't want to pay for your residential placement because it's not connected to education, but you still need one, nobody was responsible. So what the bill did, when it first came in, was it had some very strong language if you look at the original language that required us to fund placements for 18 to 21 year olds. Hence, the large fiscal note. If you take a look at the methodology of the fiscal note, you can see that that's what happened because the second dot down said "this bill would have the effect of giving 18 to 21 year olds priority on the DD waitlist". That concern was expressed by a representative of the department and what we did in committee was we created an amendment, which you can take a look at also, which has the words "shall have the same right as a person 21 years of age or older." So, in other words, what the committee did is it took away the requirement to fund these people's placement, and instead, just made them eligible for the waitlist. So they just

get in line with everybody over 21. Obviously, if you think about that, it doesn't result in any extra cost to the state because the same number of people are served depending on how much we put on the waitlist. It doesn't matter if the person who happens to be up on the waitlist is 18 or 25 or 36. So what it does in its current form as it came out of committee is it just simply gives 18 to 21 year olds who develop the need for residential placement after their 18th birthday and before their 21st, a chance to get residential services just like we give the 21 and over a chance by putting them on the waitlist. I think that is the least we can do. I firmly believe that, therefore there is no fiscal impact to this bill and that if the department was given the opportunity to redo the fiscal note, which they hadn't been able to do for today's session, we would see that. So, given that situation, I would ask that the Senate allow this bill to go to Finance, even though it has no fiscal impact anymore, where they can double check on that and we will have another chance to be absolutely sure that's true. But I think that it is really, really necessary for us to give these people some pathway into the system. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you, Mr. President. Thank you, Senator Estabrook, for taking my question. Do you recall how many people that this would entail from the discussion in committee?

SENATOR ESTABROOK: There were very few. The constituent that caused me to bring the bill forward obviously was served in our area agency, although they wasn't able to be served in our area agency, and the fellow there who works with this age group said that he had seen one other case like that in the last four years that he has been working there. So if there are two in four years in my area agency, we have ten or twelve area agencies depending on where we stand in that process. We are talking about a very small number of people statewide. But, for each individual and for those individuals' families, this is critically important. In the case that it's based on, the 18 year old lived at home with his single parent, single mother who raised him throughout high school. This is an individual with an IQ of a seven year old. And, when he became 18, he became violent and attacked his mother. There was absolutely nowhere for this person to go. The tragedy of it, is because of where he ended up going, he's now in jail. And we are now paying for him to be incarcerated. So I think that it makes a whole lot of sense for us to enable these folks to get the services that are better suited to their needs and in the end, less expensive for us.

SENATOR LETOURNEAU: Thank you, Senator Estabrook.

SENATOR FLANDERS: Just very quickly so I understand this. I think a year ago or two years ago there was an awful lot of pressure for us to add money to the waiting list. Isn't it possible that if we add people on the waiting list there is going to be more pressure on the other end, so it could be a financial note?

SENATOR ESTABROOK: That's about the only effect this would have, that it would create a slightly longer waiting list to the tune to the number of people that we just talked about. I understand that that doesn't mean that we have to spend anymore money though, and I don't think that just because of that, we should deny these people the opportunity to at least have a chance to access services.

SENATOR MARTEL: Thank you very much, Mr. President. Question of Senator Estabrook. Senator Estabrook, wasn't it made known that the

cost between having them in these type of homes versus in the prison system, were almost minute compared to what it would be for the cost of imprisoning them on a daily rate?

SENATOR ESTABROOK: Yes, that is part of what I was trying to explain to Senator Letourneau.

SENATOR MARTEL: Would you please elaborate on that a little bit about the dollars?

SENATOR ESTABROOK: Well certainly. I mean, you know, some of these individuals, when they have no where else to go, end up in situations where they end up breaking the law. Then we end up having to incarcerate them indefinitely. That is clearly a very expensive proposition.

SENATOR MARTEL: Thank you.

SENATOR ESTABROOK: Thank you.

SENATOR MORSE: Thank you, Mr. President. I believe Senator Estabrook made a very good point. It says "shall have the same right as a person 21 years of age." It just means that you shall have the same right to the pot that exists today. Having said that, I would like to send it to Finance to clarify that position and we'll take a look at it next week.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs. Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Martel for the committee.

Health and Human Services

March 16, 2005

2005-0674s

01/10

Amendment to SB 110-FN-A

Amend the bill by replacing sections 1-2 with the following:

1 Statement of Purpose. The general court recognizes that New Hampshire's lower-income uninsured residents pay too much for prescription medication. The general court recognizes that it is difficult or impossible for lower-income residents who do not have insurance to pay for medications and that this results in poorer health, higher medical costs, and increased reliance on medicaid. Therefore, to reduce current and future medicaid expenditures and improve the health of New Hampshire's population, the general court hereby creates the New Hampshire Rx plus program which will allow lower-income uninsured persons the opportunity to buy prescription drugs at discount prices.

2 New Chapter; New Hampshire Rx Plus Program for Prescription Drugs. Amend RSA by inserting after chapter 161-J the following new chapter:

CHAPTER 161-K

NEW HAMPSHIRE RX PLUS PROGRAM

161-K:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Department" means the department of health and human services.

161-K:2 New Hampshire Rx Plus Program Established. The department shall establish the New Hampshire Rx plus program for prescription drugs. The New Hampshire Rx plus program shall be available to individuals and families with incomes of not more than 350 percent of the federal poverty level that lack insurance coverage for prescription medications or that have reached the limits of their prescription medication insurance coverage. Benefits shall include the right to purchase prescription medications included on the medicaid preferred drug list from participating pharmacies at average wholesale prices less 10 percent. The department shall negotiate net prescription medication prices and pharmacy discounts for Rx plus beneficiaries. Rx plus discount prices shall be established and periodically adjusted by the department for each medication on the medicaid preferred drug list. Discount prices shall be based on negotiated pharmacy discounts, mandatory medicaid level rebates, and supplemental rebates on purchases by Rx plus beneficiaries less dispensing fees and the department's administrative costs relating to Rx plus.

161-K:3 Rx Plus Fund Established. There is hereby established in the office of the state treasurer a fund to be known as the Rx plus fund. All payments of discounts received by the department as a result of purchases by Rx plus beneficiaries, appropriations to the fund, and interest on the fund shall be deposited in the fund. Moneys in this fund shall be nonlapsing and continually appropriated to the department and may be expended on administrative costs, including contracted services, and reimbursement for pharmacist dispensing fees relating to the Rx plus program and to lower the discount prices available to Rx plus beneficiaries. The department may also reserve moneys in the fund to limit fluctuations in discount prices.

161-K:4 Contracts. The department may enter into contracts relating to this chapter, including contracts relating to program outreach, eligibility determinations, including self-declaration of income as a cost-saving measure, administration, and price and discount negotiations, and recovery. No such contracts shall permit a contractor to receive compensation or other benefit from any pharmaceutical industry entity unless the terms of such compensation or benefits and potential conflicts of interest are disclosed to the department. Such contracts shall guarantee patient confidentiality as to any records shared between the department, contractors, drug industry entities, and pharmacies.

161-K:5 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The application process.

II. Rx plus discount prices pursuant to RSA 161-K:2.

III. The administration of the Rx plus fund established in RSA 161-K:3.

IV. The contracting process, including confidentiality procedures, under RSA 161-K:4.

SENATOR MARTEL: Thank you very much, Mr. President. I move Senate Bill 110-FN ought to pass with amendment. The bill as amended establishes the New Hampshire Rx plus program for prescription drugs. Under this bill, individuals and families with incomes of not more than 350 percent of the federal poverty level that lack insurance coverage or that have reached the limits of their insurance coverage would be eligible for this program. The committee adopted an amendment that is the result of discussions with the Department of Health and Human Services

in which the New Hampshire Rx program will follow in the footsteps of what Vermont and Michigan have successfully done, which is to decrease the cost of prescription drugs through the waiver process. The committee recommends ought to pass with amendment on Senate Bill 110 and I thank you, Mr. President. And may I speak briefly on this bill? This is my bill. No, it's not. I take that back. I'm sorry. I urge ought to pass, Mr. President.

SENATOR LARSEN: I simply rise...there are members of the AARP who have sat through the whole of today's hearings just to get to this bill. For many, many years we have been working to work to bring affordable prescription drugs in a way that works within the state of New Hampshire. Through the cooperation of the Department of Health and Services, the AARP and Independent Pharmacists, we are now at a point where we think we've got a good cooperation and a bill that will help to bring down prescription drug prices for those least able to afford it in New Hampshire. It will go to Finance and I urge you to support this bill. Thank you.

SENATOR BOYCE: Senator Martel, I am trying to understand exactly who it is that's going to be selling these drugs at ten percent below wholesale? Is the Department of Health and Human Services going to go into the drug store business and buy these drugs and then sell them to people? Is that what this is going to do? I don't understand.

SENATOR MARTEL: No. Let me explain it. They, the Department of Health and Human Services will have a contract which they are going to establish with either the larger drug stores, as well as the independent pharmacists, who will disperse of the drugs. We have some very good programs okay, that are already in place at the Farm has put together and Wyatt, and Earst and other manufacturers, who have already begun processing. This will not exclude those people; it would include a larger population of citizens of the state of New Hampshire to be...to use this program in order to get their drugs at a much lower rate. It is the pharmacists who are going to be doing it.

SENATOR BOYCE: Well this says in it that the price will be ten percent less than the average wholesale and I'm just curious why it's so specific in that if we're going to be negotiating with the pharmacies. I mean, I would think that if we were going to go out and negotiate with pharmacies to get a good deal for the people who are going to be in this program, that to write into this that it will be ten percent less than wholesale, means that if we could negotiate 12 percent less, they wouldn't be able to participate at the lower price. And, if nobody wants to do it at ten percent, we might be doing nothing. So I am just curious why it's so specific on the ten percent.

SENATOR MARTEL: Senator, let me elaborate a little bit more. I may have mislead you a little bit here, but not purposely. Is that ten percent is a figure that the department has come out with along with the federal government on prescription drugs. The pharmacies themselves are not going to be negotiating price with people. It is a contract which can be established by the department and pharmacies, okay, with the type of program... "the program" and what rates they are going to be setting to sell drugs out to people who are in the program. So it's not that they are going to arbitrarily just pick and choose. Sorry if I mislead you.

SENATOR BOYCE: Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 147-FN-L, relative to eligibility for local assistance and Temporary Assistance for Needy Families. Health and Human Services Committee. Ought to pass with amendment, Vote 4-1. Senator Gallus for the committee.

Health and Human Services

March 16, 2005

2005-0700s

05/09

Amendment to SB 147-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT relative to eligibility for local assistance.

Amend the bill by replacing all after the enacting clause with the following:

1 Aid to Assisted Persons; Residency Required. Amend RSA 165:1, I to read as follows:

I. Whenever a person in any town is poor and unable to support himself *or herself*, ~~[he]~~ **the person** shall be relieved and maintained by the overseers of public welfare of such town, whether or not ~~[he]~~ **the person** has residence there. For the purposes of this chapter the term "residence" shall have the same definition as in RSA 21:6-a.

2 Assisted Person Defined; Local Responsibility; Reimbursement from Town of Prior Residence Permitted. Amend RSA 165:1-a to read as follows:

165:1-a Assisted Person Defined; Local Responsibility. Any person in a town or city who is poor and unable to support himself *or herself* shall be known as a town or city assisted person, and shall be relieved and maintained at the expense of the town or city of residence. ***If the person has been a resident of the town or city for less than 90 days, the town or city may seek reimbursement for such assistance from the person's town or city of prior residence.***

3 Aid to Assisted Persons; Nonresidents; Temporary Assistance to Return to Place of Residence. Amend RSA 165:1-c to read as follows:

165:1-c Nonresidents. Any person, poor and unable to support himself *or herself*, who is temporarily in a town or city which is not his *or her* residence, and who does not intend to make it his *or her* residence, shall be provided such temporary assistance as is reasonable and necessary by such town or city. ~~Such town or city may, if requested, cause~~ **so that** such person ~~[to]~~ **may** be returned to his *or her place of* residence.

4 Effective Date. This act shall take effect January 1, 2006.

2005-0700s

AMENDED ANALYSIS

This bill provides that if a person has been a resident of a town for less than 90 days and seeks local assistance, the town may seek reimbursement for such assistance from the person's town of prior residence.

SENATOR GALLUS: Thank you very much, Mr. President. I move Senate Bill 147-FN ought to pass with amendment. The bill as amended establishes a 90-day residency requirement for local assistance. The committee amended the bill by removing any reference to TANF and the committee recommends ought to pass with amendment on SB 147. Thank you, Mr. President.

SENATOR KENNEY: If I might speak, Mr. President. Just for the record, in the calendar, it mentions that there is a 5-0 vote. I actually, in committee, voted against the bill so it should be actually read as a 4-1 vote. My concern is really as being a public assistance officer in the past for two and a half years, is that it's going to be awful difficult for the public assistance welfare officer to track exactly that 90-day period and then also find out where that person came from. I think it could be an accounting problem for that local public assistance officer. So that's my reason for voting against the bill. I just wanted to make mention of that, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. Very briefly. The reason for the confusion on the vote is actually, I am the one who made the comment it was a 5-0 vote and not a 4-1 vote. So I am the one who made that. I am casting my sins today. Tomorrow's Good Friday.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 177-FN, prohibiting the sale of certain food and drinks in the public school cafeterias. Health and Human Services Committee. Inexpedient to legislate, Vote 4-1. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 177-FN inexpedient to legislate. Currently, local school boards, superintendents, principals and parents are already working on this issue. For example, the vending machines are programmed to comply with the Federal School Lunch Program. In other instances, local jurisdictions are implementing more restrictive measures. In view of these trends, the committee recommends inexpedient to legislate on Senate Bill 177 and we thank the sponsor for bringing this bill forward. Thank you.

SENATOR FOSTER: Thank you, Mr. President. I rise in opposition to the committee report of inexpedient to legislate. I have taken a lot of jibes about this bill. People say I want to start the food police. Any time anybody's eating a candy bar, they sort of smile or wink. I actually thought of bringing in cake or candy and it probably would be the right hour to have done that. But, for a bill that seems sort of funny, it's got a lot of media coverage. Not from me. I didn't call any media outlet. Had an editorial in the *Portsmouth Herald* suggesting the bill be passed. *Hampton Union* lead editorial also talked about it. It's been on *Channel Nine* a couple of times. *NHPR* has talked about it. It's not just my bill that's getting that kind of attention. In an interview that Arnold Schwarzenegger was giving to George Stephanopoulos a couple of weeks ago that I happened to catch, he was talking about it in California as it being an important sort of move. California has a law similar to what I am talking about and he is thinking of moving it forward and was asking the legislature to bring him something like that. You might ask well why. Because the bill talks about something that is really important, which is the problem of childhood obesity today. Think back if you can, it's hard for most of us, when you were in elementary school. You might recall that there was usually a kid, maybe two, who were overweight or the fat kid and the kid had a hard time. It was rough on him. The good news today for those kids is that, out of 20, there is probably four or five, so they don't get teased anymore. But the health

problems that obesity has is going to continue and move forward. UNH had a study and it says that something like 20 percent of our young people are either grossly overweight or near obese. One in five. That is a really scary number. Why's it scary? What did we talk about first thing when we came in here today? Senate Bill 110 reforms. If you sat through some of those hearings as I did, some of the push and pull of all of that is how do you keep young, healthy people in the system, because if young, healthy people drop out of the system, the whole health system kind of crashes and costs go up. Well what...having the problem of childhood obesity means is we are not going to have the young, healthy people to prop up the system. What does childhood obesity cause? This is from Doctor Susan Lynch's testimony who's an expert in this field. High Cholesterol, hypertension, altered hormonal levels, obstructed sleep apnea, joint problems, increased risk of asthma, fatty liver which can lead to cirrhosis like conditions, mental health problems with depression. This is what childhood obesity leads to. So what I would suggest to you is that if we don't do something to address this problem soon, we are all going to have huge problems. Not now, but when we are in retirement age with the healthcare systems. Childhood obesity is something that really has to be addressed. Now if I had to do it again, I probably wouldn't have...I would have looked at the title of the bill because it talks about prohibiting foods, and really what its intended to do is to encourage healthy foods to be sold in the schools. You know, kids want to come to school with unhealthy food. Parents can pack them a lunch. Nobody is saying you can't have a coke and candy for lunch, but just don't buy it in the schools. If we are going to teach healthy nutrition in schools, the kids leave the classroom and the first thing they do is they see a vending machine. You know, "do as I say, not as I do". If you look at who came out to testify in this bill, American Heart Association, American Cancer Society, Child and Family Services, New Hampshire Dental Society, the New Hampshire Public Health Director, and importantly, Anthem, the health insurance connection. They're really concerned about childhood obesity because they see down the road it's going to cause really, huge, terrible problems. So what this bill does is just tries to take the unhealthy food out of the vending machines in the cafeterias and put healthy food in there. Now who came to testify against? Bottling industry. The gist of their testimony was, as Senator Letourneau says, some of the school districts are dealing with it and that's true. But what he also **TAPE CHANGE** drinking that much. And he took a bottle like this, and he put it down in front of the committee. He said this is what the average kid drinks of soft drinks in a classroom. The average kid. Well this is about one-fifth full. That means that one out of every five kids is having a full soda. By the way, I was watching...I don't know if any of you watch American Dreams, they were drinking Coca-Cola last night. That's a show that took place in the mid- 60s. Remember those old glass Coke bottles that you used to drink? Well those things were eight ounces. This is twenty ounces. They're the only people that came out and they said it's not a problem. Well obviously, if not that much is being drank, why do they care? Why would you come out and testify and say that not much is being drank in the schools so don't pass the bill, it's not a problem. Obviously a lot is being consumed; otherwise they wouldn't have bothered to come out to testify against the bill. The only other people that appeared were the New Hampshire School Boards Association, but they didn't testify. They signed in against the bill. So, a wide variety of people who are concerned about health issues says this is a good idea

and we ought to move in this direction, and the bottling industry says no. I would urge the Senate to think about this. I brought this forward as much as anything else, to have the discussion out there. If nothing else, I hope that some school boards, as Senator Letourneau said, that this will bring the attention to it. I know we are concerned about local control and we don't like to tell local communities what to do, but this is really to me, a statewide health problem, it's not a local problem. So I would ask the committee report of inexpedient to legislate be overturned. Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. Senator Foster, you have been very candid with me about this bill and I thank you for your fine testimony today as you did before the committee. When I was in school, there was no such thing as a soda machine. So I understand the dilemma of the machines today. But, don't you agree that in most cities and towns and school systems, they do have the lock mechanisms on the soda machines available in the schools so that they don't have access to junk foods or junk sodas during school or a short period before or after?

SENATOR FOSTER: I think some school systems do and some school systems don't. The city of Nashua's actually gone ahead and done something like what I am suggesting. My daughter...we were in school for a recital the other day and the kid looked into the vending machine, and yes, there were chips there, but they were baked chips. There were healthier snacks in there. That's how they're dealing with it. So I guess what I would answer is some communities are moving to, I think Manchester has taken some steps in this area and Portsmouth and a lot of communities have.

SENATOR MARTEL: Thank you.

SENATOR BOYCE: Senator Foster, would you believe that almost 20 years ago when I was teaching at Pembroke Academy that there was a lock on the Coke machine in the school that was operated by a teacher? At some point, I believe it was as the school day ended, the teacher would go out and unlock the machine and the kids go have a Coke on their way home. But this is not a new issue. It is not brand new in this bill. It's been around for at least 20 years. Do we really need this bill to make this thing go forward?

SENATOR FOSTER: I guess 20 years ago, as I was saying in my testimony, this wasn't a considered a health care epidemic and I think most people in the medical field consider today that it is. It wasn't then, as I said. I think there are always obviously, overweight people and children, but every trend line says it's going up. So, I think we have to be stricter about it today than we were then.

SENATOR BARNES: Just a question of Senator Foster. Would you believe, Senator Foster, that I think that video games and TV have much to do with fat kids as vending machines in the school system?

SENATOR FOSTER: I believe that you believe that and I agree with you. As Senator Martel can say, this is not the only solution. I think that we last year passed a piece of legislation encouraging daily physical activities in the schools. I don't think kids are as active as they used to be and I think you're right. But, we have to deal with the situations in which we live in and this is one way to address part of the problem.

SENATOR LARSEN: Just quickly. I am a co-sponsor of this bill because I think sometimes we bring in legislation, not just, well, in order to

heighten the public awareness. There is concern that somehow replacing healthy food snacks for junk food would mean a loss of revenues for the schools. Perhaps that's why the School Boards Association came in. There is evidence that 14 schools around the country who have measured, they have changed what's in their vending machines and added things like granola bars or oriental snack mix instead of the higher fat, have in fact, not seen revenue declines, and in fact, there is evidence that students are eating about the same caloric amount, but it's the lack also of physical education that is added to this. If we can somehow encourage healthy eating why would we not do that? The House, I understand, has a bill to require local school boards to create committees that look at nutrition and physical activity. Perhaps that's one approach, but it is certainly an issue which needs to be addressed and that explains so much of why Anthem was there. The American Heart Association came to speak for the bill, and the American Cancer Society. There is good reason for us to look at this. I hope that we will continue to focus on this issue as time goes on.

SENATOR LETOURNEAU: Just a short blurb here. These school buildings are used by more than just the kids during the day. These school buildings, particularly in my community, are used for all kinds of activities in the evening. Of course, the cafeteria is not open. It is used by adults. The School Board uses them, the Planning Board uses them and all other town people use them. These machines are shut off by computer during lunch time, during the day so that the kids can't get into them, at least in my town, so they can't get into them and buy Coke or sweets and they have to go through the lunch line. So, I think what we are talking about here is really a local issue and if people feel that strongly about it, they can certainly go to their local school boards and demand that these things be changed. But, to pass a state law that affects everybody, and has unintended consequences, I think it would be wrong. The intent is good. I don't disagree with the intent.

SENATOR BARNES: Thank you. Very quickly, Mr. President. All this talk about food is making me very hungry. I would like to move the question please.

SENATOR HASSAN: Thank you, Mr. President. I just wanted to respond to the expression of concern about this being a local issue. To the degree we are dealing with a public health epidemic which the medical evidence suggests we are, the state will, in effect, begin paying for this epidemic at least through its Medicaid Program. So the modest changes, they won't eliminate obesity altogether, but we all know that modest changes in caloric intake do result in weight loss, so I think it is a state-wide issue and I would move against the inexpedient to legislate.

Committee report of inexpedient to legislate is adopted.

SENATOR BURLING: I would just like the record to show that this debate was carried on entirely by the people of slim physique. Those of us with somewhat more robust body styles stayed in our seats.

SENATOR FLANDERS: Mr. President, I also was glad that Senator Barnes moved the question, because I was sick of hearing the word obesity.

SB 206-FN, relative to the state code of ethics and establishing an executive ethics commission. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Larsen for the committee.

Internal Affairs
March 16, 2005
2005-0696s
05/09

Amendment to SB 206-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Code of Ethics; Definition of Public Official; Elected Members Added. Amend RSA 21-G:21, V to read as follows:

V. "Public official" means ***a member of the executive branch elected by the public or the general court, or*** a commissioned, unclassified, or nonclassified executive branch employee[, ~~but shall not include any commissioned, unclassified, or nonclassified employee elected by the legislature~~].

2 Executive Ethics Commission Established. RSA 21-G:29 is repealed and reenacted to read as follows:

21-G:29 Commission Established; Jurisdiction; Membership.

I. There is hereby established an executive ethics commission to develop standards for executive ethics and resolve, through procedures established under RSA 21-G:32, issues, questions, or complaints involving public employees, other than classified employees, and public officials of the executive branch.

II. The jurisdiction of the commission shall consist of matters arising under the executive branch code of ethics, RSA 21-G:21-28 and rules or guidelines adopted thereunder.

III. The commission shall consist of the following members, none of whom shall be a public official or public employee within the meaning of this chapter and at least one of whom shall be an attorney who is a member of the New Hampshire bar:

(a) Four public members, appointed by the governor, no more than 2 of whom shall be members of the same political party.

(b) Two retired members of the judiciary, appointed by the chief justice of the supreme court.

(c) One public member, appointed by the executive council.

IV. Persons appointed to the commission shall be qualified by excellent personal reputation and by education or experience in public service, in resolving ethical issues facing persons in public service, or in the law.

V. Commission members shall serve terms of 3 years and until their successors are appointed and qualified. However, initially the governor and the chief justice of the supreme court shall each appoint a member for a one-year term, and the governor and executive council shall each appoint a member for a 2-year term. Vacancies shall be filled for the remainder of the unexpired term. Initial appointments to the commission shall be made no later than 90 days after the effective date of this section.

VI. The governor shall designate one of the governor's appointees to convene the first meeting, which shall take place no later than 30 days after a majority of the membership has been appointed.

VII. Commission members shall receive no compensation, except that commission members shall receive mileage at the state employee rate.

21-G:30 Duties.

I. The commission shall be authorized to:

(a) Issue guidelines to elucidate proper and appropriate conduct for individuals relating to the performance of their duties as public officials and public employees other than classified employees. Such guidelines shall be consistent with statute.

(b) Issue interpretative rulings explaining and clarifying any law, guideline, rule, or regulation within the jurisdiction of the commission.

(c) Render an advisory opinion, in writing within a reasonable time, in response to a written request by a public official or public employee other than a classified employee, concerning the application of any law, guideline, rule, or regulation within the commission's jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion. Any advisory opinion concerning any person subject to the provisions of this subdivision who acted in reliance thereon, shall be binding upon the commission, and it shall be an absolute defense in any complaint brought under this subdivision that the person complained against acted in reliance upon such advisory opinion.

(d) Receive sworn complaints, investigate allegations of violations of this subdivision or guidelines adopted thereunder by public officials or public employees other than classified employees, and make appropriate findings of fact and conclusions with respect to such conduct.

(e) Investigate any unauthorized disclosure of information by any commission member or assistant and report to the appropriate authority any allegation which it finds to be substantiated.

II. All actions of the commission shall require an affirmative vote of 4 or more members of the commission before becoming effective.

21-G:31 Complaints; Procedure.

I. Each complaint shall be submitted in writing and signed under oath by the complainant. The sworn complaint shall be filed confidentially with the commission and shall contain the name and address of the complainant. The public official or public employee complained against shall be furnished with a copy of the complaint and a copy shall be sent to each member of the commission for review. The commission may initiate a complaint on its own motion against any individual the commission has reason to believe has violated this subdivision or guidelines adopted thereunder. The commission shall promptly examine each sworn complaint and:

(a) Upon first examination, if by a two-thirds affirmative vote it determines that a complaint is frivolous, scurrilous, retaliatory in nature, or plainly not within the commission's jurisdiction, the commission may summarily discharge the complaint without further meeting or proceeding. The commission shall notify the respondent and complainant in writing of its action.

(b) For any complaint not summarily discharged, the commission shall conduct an initial review to ascertain whether the commission has jurisdiction to consider the complaint or whether the complaint is without merit or is unfounded. If the commission concludes by a recorded vote that the alleged conduct is not within the commission's jurisdiction, is without merit, or is unfounded, the commission shall dismiss the complaint and shall report such conclusion to the complainant and to the public official or public employee, with an explanation of the basis of such determination.

II. If the commission, by recorded vote, concludes that the complaint is within its jurisdiction and may have merit, the commission may proceed to conduct a preliminary investigation. Upon completion of its preliminary investigation, the commission shall conclude by recorded vote that:

(a) No violation occurred and no further action is appropriate;

(b) The violation is inadvertent, technical, or of a de minimis nature and shall be addressed by informal methods; or

(c) There are reasonable grounds to believe a violation occurred and formal proceedings shall be instituted to inquire further into the complaint. In that event, the commission shall issue a formal statement of charges and proceed to a hearing on the complaint.

III. Upon completion of the hearing, the commission shall conclude by recorded vote that:

(a) No violation occurred and no further action is appropriate;

(b) No action is appropriate because there is not clear and convincing evidence that a violation occurred;

(c) Based upon clear and convincing evidence, a violation occurred, but such violation does not justify formal disciplinary action and shall be resolved by informal methods; or

(d) Based upon clear and convincing evidence, a violation occurred, and the violation was of a serious nature so as to warrant formal disciplinary action. In the case of a public employee other than a classified employee, the commission may recommend disciplinary action by the employee's supervisor, including but not limited to termination of employment. In the case of a finding of violation by a public official, the commission may recommend disciplinary action by the appropriate body, including but not limited to removal from office under RSA 4:1, or, in the case of the governor, executive council member, or other officer of the state, impeachment or other appropriate action pursuant to part II, article 38 of the New Hampshire constitution. In addition to any recommendation for disciplinary action under this subparagraph, the commission may refer the case to the department of justice for criminal prosecution under RSA 21-G:33.

IV. Any person who knowingly or willfully swears falsely to a sworn complaint does so under penalty of perjury, and the commission may refer any such case to the department of justice for prosecution.

V. Except as otherwise provided in this paragraph and notwithstanding any other provision of law, all proceedings, information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the commission in the course of its work, shall be confidential. The commission shall first examine any sworn complaint and shall conduct its initial review and preliminary investigation of complaints in a confidential manner, unless otherwise requested by the public official or public employee complained against. The commission shall conduct formal proceedings, other than its deliberations, in public session. The commission's deliberations on complaints shall be conducted in nonpublic session. Upon completion of the preliminary investigation conducted under paragraph II, and a vote taken under subparagraph II(a) or (b), or at the conclusion of formal proceedings under paragraph III, the commission shall make available for public inspection all records, other than its work product and internal memoranda relating to the complaint.

VI. In proceedings under this subdivision, the commission shall have the power to issue subpoenas and administer oaths.

VII. Any member of the commission who is directly or indirectly involved in any complaint before the commission shall not participate in any proceedings regarding the complaint. In the event that recusals under this paragraph reduce the number of participating members to fewer than 4, the remaining participating members shall designate an alternate or alternates sufficient to increase the commission to 4 members, to serve on the commission for that case only.

21-G:32 Rules; Procedures and Standards. The commission shall adopt, publish, and make available to the public rules governing its procedures, as well as guidelines referred to in RSA 21-G:30, I, consistent with the procedures set forth in RSA 541-A.

21-G:33 Penalty.

I. Any person who knowingly or willfully violates RSA 21-G:21-28 or makes unauthorized disclosure of confidential matters or materials contrary to RSA 21-G:31, or interferes with or obstructs lawful activities of the commission, shall be guilty of a misdemeanor and may be subject to disciplinary action as provided in RSA 21-G:31, III(d) and other applicable law.

II. In the case of any person convicted under this section, the court may order restitution.

21-G:34 Commission Administration and Staff. The commission shall be administratively attached to the department of justice, which shall provide appropriate administrative and investigative staff and legal counsel in support of the commission's activities, at the commission's request. Files and records of the commission shall be protected against access other than by members of the commission and other persons specifically authorized by the commission.

3 Supplemental State Agency Ethical Codes. Amend RSA 21-G:27 to read as follows:

21-G:27 Supplemental State Agency Ethical Codes. In addition to this code, each agency may promulgate a supplemental ethics code to address issues specific to that agency. In the event of a conflict, ~~the provisions of this code shall supersede the agency code~~ **with the provisions of this code, a stricter provision of an agency code shall govern.** To the extent that this code or an ethics code adopted by an agency shall apply to classified employees, this code, or an agency code, shall be interpreted to be consistent with the provisions of the classified employees' collective bargaining agreement **and the state personnel rules.**

4 Acceptance and Giving of Gifts Prohibited. Amend RSA 21-G:25 to read as follows:

21-G:25 Acceptance and Giving of Gifts. ~~[Any]~~ **No** public employee, public official, and any public employee's or public official's spouse or dependent ~~[who gives, solicits, accepts, or agrees to accept a gift from]~~ **shall give a gift to, or solicit, accept, or agree to accept a gift from,** a person who is subject to or likely to become subject to or interested in any matter or action pending before or contemplated by the public employee or official or by the governmental body with which that employee or official is affiliated ~~[shall disclose the gift in the statement of financial disclosure filed under RSA 21-G:28]~~. Nothing in this section shall be construed to prohibit gifts made to the state of New Hampshire and accepted in accordance with the law.

5 Duration of Restriction on Employment. Amend RSA 21-G:26 to read as follows:

21-G:26 Employment Restrictions. For ~~[6]~~ **12** months after leaving office or employment with the state, no public official shall appear as a lobbyist to promote or oppose directly any specific legislation pending or proposed before the general court on behalf of any matter over which that official had personal and direct responsibility while in state government.

6 Financial Disclosure. Amend RSA 21-G:28 to read as follows:

21-G:28 Financial Disclosure.

I.(a) To ensure that the performance of official duties does not give rise to a conflict of interest, the following ~~[public officials]~~ **persons** shall file with the secretary of state a statement of financial disclosure in such form as the secretary of state may prescribe:

(1) All agency heads; and

(2) Any public official designated, due to the responsibilities of the position, by the agency head.

(3) Any person not employed by the state who is acting on behalf of the governor or an agency while engaged in state business.

(b) ~~[The]~~ **Each** agency head shall file with the secretary of state an organizational chart identifying the names, titles, and position numbers of ~~[officials]~~ **persons** required to file a statement of financial disclosure.

(c) The governor shall file with the secretary of state an organizational chart identifying the names and titles of all persons who are acting on behalf of the governor and who are required to file a statement of financial disclosure.

II. The initial statements of financial disclosure and organizational charts required under this section shall be filed by July 1, 2005. Thereafter, revised statements of financial disclosure and organizational charts shall be filed immediately upon any change of status. ~~[New agency heads shall]~~ **Any person required under this section to** file a statement of financial disclosure **shall do so** no later than the first day of service.

III. Statements of financial disclosure and organizational charts filed with the secretary of state shall be public documents.

7 Executive Order Superseded. The provisions of this act and RSA 21-G:21-28 supersede and replace the provisions of Executive Order Number 98-1, dated May 19, 1998.

8 Effective Date. This act shall take effect July 1, 2005.

2005-0696s

AMENDED ANALYSIS

This bill:

I. Expands the state code of ethics to members of the executive branch elected by the public or the general court.

II. Establishes an executive ethics commission to address ethics complaints involving public officials and public employees, other than classified employees.

III. Prohibits a public employee, public official, and his or her spouse or dependent from accepting or giving a gift to a person who is subject to or interested in any matter or action before the public employee or public official.

IV. Extends the restriction on lobbying by former public officials from 6 months to 12 months after leaving office.

V. Requires a person who is not employed by the state but who is acting on behalf of the governor or an agency and engaged in state business to file a financial disclosure statement with the secretary of state.

SENATOR LARSEN: Thank you, Mr. President. I move that Senate Bill 206 ought to pass. The original Senate Bill 206 was created along the lines of the Legislative Ethics Committee. The committee amendment is still based on that model, but it was an amendment that was brought through hard work of the Attorney General's Office, the Department of Personnel in Administrative Services, members of the Governor's office, myself and all of the other sponsors who could attend. We worked through what I hope is a reasonable amendment that covers both elected and

appointed officials in the executive branch along with nonclassified, unclassified employees serving in the executive branch, covering volunteers and covering...the amendment further adds...changes some of the commission members. Commissioner members appointed by the Governor. Commission members appointed by the Executive Council to retired judges, and serving staggered terms. Some of these issues were in fact ones which came up in the discussion and I think dramatically improved this bill. I think and hope that everyone in this room will support this new commission. It gives staff assistance and legal counsel from the Department of Justice. It will in fact be both a sounding board for those in the executive branch who have questions. If we in the legislature for example, have questions on ethics, we can ask of the Legislative Ethics Committee of our own. The executive branch will have this similar sounding board for ethical questions and code of procedures which will clarify reporting and bring, I hope, an improvement to full disclosure and one which we had both Executive Councilors and the Governor and, as I say, the Attorney General's Office working on it. I urge the full body to support Senate Bill 206 as ought to pass.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 37, relative to disclosure of expert testimony. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary

March 15, 2005

2005-0644s

09/01

Amendment to SB 37

Amend the bill by replacing section 1 with the following:

1 Disclosure of Expert Testimony. Amend RSA 516:29-b, III to read as follows:

III. These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures *in a civil case* shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 30 days after the disclosure made by the other party. *The disclosures in a criminal case shall be made pursuant to an order of the court, and the court shall provide that disclosures be made at least 60 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party, within 30 days after the disclosure made by the other party.* The parties shall supplement these disclosures when required in accordance with the court's rules.

2005-0644s

AMENDED ANALYSIS

This bill changes certain requirements regarding disclosure of expert testimony in criminal cases.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 37 ought to pass with amendment. Senate Bill 37 makes the current law regarding disclosure of expert testimony applicable only to civil cases and was filed at the request of the Attorney General. Due to their heavy caseloads, the Department of Justice and state laboratories have experienced difficulty in meeting the disclosure deadlines outlined in RSA 516:20-b. The deadlines are also being inconsistently applied in the state's various courts. This has resulted in some attorneys using the deadlines as a defense tactic in getting charges dismissed. The committee amendment clarifies the deadlines allowing at least 90 days prior to a trial date in a civil case and addresses the Attorney General's concerns regarding the criminal cases. The Judiciary Committee recommends that this legislation be adopted with amendment and asks for your support. Thank you.

Amendment adopted.

SENATOR BURLING: A question of Senator Gottesman. Senator, it's been a long time since I was in a courtroom or a pretrial conference, but does this affect a judge's ability to set discovery schedules and trial schedules in a pretrial conference in a civil matter?

SENATOR GOTTESMAN: I think that in a civil case it's already established under this statute and under the rules of court. So, I think it doesn't affect adversely anything in a civil case. The idea of this particular legislation was that it was supposed to originally only be applied to civil cases, not to criminal cases. After a hearing, it was decided that it could apply to criminal cases because the criminal defense lawyers wanted the quality of the disclosure to be provided but they wanted to do it within reasonableness of time, so that the Attorney General could provide it to them. I hope that answers your question.

SENATOR BURLING: It does. Thank you.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Foster rule #42.

SB 224, relative to the committee on judicial conduct. Judiciary Committee. Ought to pass, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 224 ought to pass. Senate Bill 224 establishes the same requirement for the Judicial Conduct Committee that had been adopted for the independent JCC that is now defunct. The need for this confidentiality arises from a complaint against a judge that would require the JCC to review reports which are statutorily confidential. The reports could be reviewed and confidentiality still maintained. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

Adopted.

Ordered to third reading.

SB 124, relative to the regulation of real estate brokers by the real estate commission. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

Public and Municipal Affairs**March 16, 2005****2005-0676s****10/05****Amendment to SB 124**

Amend RSA 331-A:10, II(g) as inserted by section 8 of the bill by replacing it with the following:

(g) Submits evidence acceptable to the commission of at least 6 separate real estate transactions in which the applicant was actively involved and was compensated or proves to the commission that the applicant has equivalent experience; and

Amend RSA 331-A:16, IV(a) as inserted by section 11 of the bill by replacing it with the following:

(a) All advertisements by an associate broker or salesperson shall include the associate broker's or salesperson's legal name or reasonable derivative thereof and the regular business name of the firm or the principal broker's name when licensed under an individual principal broker license. The firm or principal broker's name, within the advertisement, shall be clearly identifiable. This requirement shall apply to all categories of advertising including all publications, radio or television broadcasts, all electronic media including electronic mail and the Internet, business stationery, business and legal forms and documents, and signs and billboards.

Amend RSA 331-A:25-d, I as inserted by section 18 of the bill by replacing it with the following:

I. A licensee may act as a disclosed dual agent only with the written consent of all parties [involved in the real estate transaction] to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer for sale or lease.

Amend RSA 331-A:26, XII as inserted by section 19 of the bill by replacing it with the following:

XII. Acting for more than one party in a transaction without [the knowledge] making full disclosure and obtaining written consent [in writing] of all parties [for whom the licensee acts, and without first making full disclosure of all the facts to all parties interested in the transaction] to the anticipated transaction at the time in which a dual agency relationship occurs, but no later than the preparation of a written offer for sale or lease.

Amend the bill by deleting section 4 and renumbering the original sections 5-23 to read as 4-22, respectively.

SENATOR LARSEN: Thank you, Mr. President. I move Senate Bill 124 ought to pass with amendment. Senate Bill 124 makes various changes to the law regulating real estate brokers and the Real Estate Commission, including a criminal records check for all applicants for a salesperson or broker's license. The bill also adds a statement on unprofessional conduct of employees of the Commission, including a code of ethics. This bill is supported by the Real Estate Commission and the Association of Realtors. The Public and Municipal Affairs Committee unanimously recommends a vote of ought to pass with amendment for this bill. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 143, relative to the adoption and use of impact fees for public open space. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

Public and Municipal Affairs

March 16, 2005

2005-0694s

06/04

Amendment to SB 143

Amend the bill by replacing all after section 1 with the following:

2 Open Space Impact Fees; Maximum Fee. RSA 674:21, V(a) is repealed and reenacted to read as follows:

(a) The amount of any open space fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees. The maximum open space impact fee shall be:

(1) For developments of 50 or fewer housing units, \$250 per unit.

(2) For developments of 51-200 housing units, \$500 per unit.

(3) For developments of more than 200 housing units, \$750 per unit.

(4) For developments which include 10 percent or more of the units as workforce housing units, ½ of the amount applicable under subparagraphs (1), (2), or (3).

3 New Paragraph; Method of Enactment in Cities and Towns Which do not Have a Town Meeting Form of Government; Impact Fee for Public Open Space. Amend RSA 675:2 by inserting after paragraph I the following new paragraph:

I-a. A zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting.

4 New Paragraph; Method of Enactment in Towns With a Town Meeting Form of Government and Village Districts; Impact Fee for Public Open Space. Amend RSA 675:3 by inserting after paragraph I the following new paragraph:

I-a. A zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting.

5 New Paragraph; Method of Enactment by Petition; Impact Fee for Public Open Space. Amend RSA 675:4 by inserting after paragraph III the following new paragraph:

III-a. A petitioned zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting.

6 Towns Which do not Have a Town Meeting Form of Government. Amend the section heading of RSA 675:2 to read as follows:

675:2 Method of Enactment in Cities and Towns [~~Operating Under Town Council~~] **Which do not Have a Town Meeting** Form of Government.

7 Towns Which Have a Town Meeting Form of Government. Amend the section heading of RSA 675:3 to read as follows:

675:3 Method of Enactment in [Certain] Towns ***Which Have a Town Meeting Form of Government*** and Village Districts.

8 Method of Enactment in Towns With a Town Meeting Form of Government and Village Districts. Amend RSA 675:3, I to read as follows:

I. Any town [~~not operating under the town council~~] ***with a town meeting*** form of government, or any village district which is specifically authorized by law to enact a zoning ordinance, shall establish and amend a zoning ordinance, historic district ordinance, or building code upon the affirmative vote by ballot of a majority of the legal voters present and voting on the day of the meeting, as provided in paragraph VII. Any proposed zoning ordinance, as submitted by a planning board or any amendment to an existing zoning ordinance as proposed by a planning board, board of selectmen or village district commission shall be submitted to the voters of a town or village district in the manner prescribed in this section.

9 Effective Date. This act shall take effect 60 days after its passage.

2005-0694s

AMENDED ANALYSIS

This bill allows a town to adopt a zoning ordinance, or an amendment to a zoning ordinance, that includes impact fees for public open space if the ordinance or amendment receives an affirmative vote of 60 percent of the voters. The bill also establishes maximum impact fees and reduces the maximum impact fee by ½ for developments that include workforce housing units.

SENATOR MARTEL: Thank you, Mr. President. I move that Senate Bill 143 ought to pass with amendment. Senate Bill 143 allows a town to adopt a zoning ordinance, or an amendment to a zoning ordinance, that includes impact fees for public open space if the ordinance or amendment receives an affirmative vote of 60 percent of the voters. This bill also establishes maximum impact fees and reduces the maximum impact fee by half for developments that include workforce housing units. In essence, this bill will help towns to provide more open space for their residents by establishing a revenue stream that can be used for the purchase of open space. I believe this bill will also help to encourage the development of workforce housing units. The Public and Municipal Affairs Committee recommends a vote of ought to pass with amendment for this bill. I thank you, Mr. President.

SENATOR BOYCE: I would like to speak since it appears we are going to have a roll call. I am concerned about this bill simply because it is just yet another way that the government is in the business of taking out of the hands of the public, the private owners, land that might otherwise be used for other purposes. I am not in favor of the state, local, federal government buying up all the available land, because what that does is it drives up the cost of developing things. It was mentioned workforce housing is a problem. If we increase the cost of each home that is being built by \$250, \$550 or \$750 or whatever, and then we use that money to buy up land that might otherwise be developed into housing, what that does is on the front end, it raises the cost of the house that somebody is buying today, and it also, on the backside, raises the cost of the house that somebody will buy tomorrow. So, we're saying we want to increase the amount of available housing but we're making it more ex-

pensive to build houses. This is at cross purposes. I am not in favor of this. This is one of the reasons that I've always opposed the LCHIP program. It is taking land away from private individuals who can then decide what to do with that land. It's giving an incentive to somebody to go out and buy land or buy the rights to develop land which then makes it so that that land can't be developed for some higher purpose which, in some towns, that could grossly change their property tax rates if they were able to develop some piece of land, or it might increase the cost of building a school because the only available pieces of land left in their town would be too small to build a school on and they would not be able to build a school in their town. There's all sorts of things that I see are wrong with this whole program and, on that basis, I am opposed to this. Thank you.

SENATOR BURLING: Thank you, Mr. President. I certainly understand the perspective of the prior speaker, but I would remind everybody that what we are doing once again is empowering our fellow citizens to act in their local government as they deem most appropriate to protect their communities, enhance the value of their communities, and improve the quality of those communities. I think that we ought to be doing that.

SENATOR CLEGG: Thank you, Mr. President. I rise in favor of the bill. I am the prime sponsor and I do development. I just want to point out that, as the previous speaker said, we are already told to provide the communities with free space. This goes one step further. It allows the cities and towns to vote in a manner that says we want any new development to pay its fair share for us to buy a park or any open space so that we get to replace what you took or what you used in a different manner. I shouldn't say "take". Many times we go in and we have a ten-lot subdivision and the planning board says "Give me two lots I am going to use it as a playground" and it doesn't get used for a playground; it just becomes two empty lots. Now what they can say is "Give me money to replace those lots. Give me some money so I can go with everyone else and create a nice park. A nice wooded areas, maybe some trails." But, do something that makes sense for the entire community and not just hold developers hostage in their zoning and planning boards. So I would ask my colleagues to support the bill as amended so that we can move forward. Thank you.

SENATOR BARNES: Thank you Mr. President. Real quick. Senator Clegg, would you agree with Senator Burling that this is definitely a local control issue and that we love to vote on local control issues?

SENATOR CLEGG: I would definitely agree that this is a local control issue, sir.

SENATOR BARNES: Thank you. Thank you for bringing the bill forward. I wish you would had asked me to be a sponsor of it.

SENATOR GATSAS: Senator Clegg, I'm just looking through this bill and I understand that communities that have town meetings have to get a 60 percent vote. I am looking at cities that don't have towns meetings and what their requirement would be, because I look at number six and it says, "towns which do not have a town meeting form of government." And then section RSA 675:2 to read as follows. And, when you read that, I don't know what it does.

SENATOR CLEGG: I am not sure I can tell you what it does. I think there is a line missing.

SENATOR GATSAS: Does this have to go to Finance, Senator?

SENATOR CLEGG: I don't believe it does. There is no fiscal impact for the state.

SENATOR GATSAS: Can we put it on the table and find out if there is a problem and fix it, 'cause it doesn't sound like it?

MOTION TO TABLE

SENATOR BARNES: I would like to make a motion to table so our attorney can take a look and get that information for us before we take a final vote on it, Mr. President.

Senator Barnes moved to have SB 143 laid on the table.

Adopted.

LAID ON THE TABLE

SB 143, relative to the adoption and use of impact fees for public open space.

SB 95-L, relative to noise from motor vehicles. Transportation and Interstate Cooperation Committee. Re-refer to committee, Vote 6-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 95-L be re-referred to committee. Senate Bill 95-L prohibits motor vehicles from emitting loud, unnecessary, unusual, or unreasonable noise, including sound system noise, when operated upon a public way. The committee applauds the intentions of the sponsors; we feel that this idea needs further study and clarification. The Transportation and Interstate Committee asks for your support for the motion of re-refer to committee. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the motion as the prime sponsor of the bill. I was requested by the police chief of Goffstown and the police in Manchester to sponsor this piece of legislation because of the problem with noise that has become pervasive in the city. They have to deal with, as the weather gets better, that noise problem is going to exacerbate in the city, particularly in the very congested areas of Manchester where we have multi-family housing and a number of vehicles moving up and down the street. Now that has been a problem for the people living in the neighborhoods. It has been a real concern. The police feel that, at this point, their really, their hands are tied in terms of dealing with this situation. But it is something that is extremely disruptive to the neighborhoods and it is a very, very time consuming situation when you have to have an officer out there all the time, all the time, all the time, into the neighborhoods where they can't be doing other things that they have to do. So, if indeed it gets re-referred, one would hope that we would get something out in time to answer the problem that, as I say, has become pervasive in the communities that I represent. I am sure that this problem has risen in some of the communities that you represent. Thank you, Mr. President.

Committee report of re-refer is adopted.

SB 138-L, relative to motor vehicle liability for municipal workers. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass on Senate Bill 138-L. This bill extends existing policy to municipal public

works or highway department employees. The policy I am describing is the policy to limit personal liability of now volunteer firefighters, firefighters, police and municipal public works or highway department employees while they are operating vehicles owned by the state or the municipality within their official duties. It is a narrow and well-defined limitation on their personal liability. Our feeling is that this is a group of people who take extraordinary risks for us and do hard work and the liability pool, if you will, the pocket, is there in the form of the municipality which employs them. We did hear, I think, very moving testimony for some employees who had found their personal liability policies and their personal driving records impacted by things that happened to them basically as employees of their city or town. So I would hope that you would support us in our ought to pass motion.

Adopted.

Ordered to third reading.

SB 145-FN, establishing a medical/vision advisory board. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

March 17, 2005

2005-0703s

03/10

Amendment to SB 145-FN

Amend RSA 263:6-b, I as inserted by section 1 of the bill by replacing it with the following:

I. In order to advise the director on medical criteria for the reporting and examination of drivers with medical impairments, a medical/vision advisory board is hereby established within the division. The board shall be composed of 3 members appointed by the director. Two of the members of the board shall be licensed physicians and residents of this state, and one member of the board shall be a licensed optometrist and a resident of this state. Of the original appointees, one shall serve for a term of 2 years and 2 shall serve for terms of 4 years. Subsequent appointees shall each serve for a term of 4 years or until their successors are appointed and approved. Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term. The members of the board shall receive no compensation for their services and shall not hire any staff personnel but shall be paid mileage when attending to the duties of the committee at the maximum rate established in the Internal Revenue Code and regulations. After the first full year of operation of the advisory board, the board shall meet no more than 4 times per year.

Amend RSA 263:6-b as inserted by section 1 of the bill by inserting after paragraph II the following new paragraph:

III. The medical/vision advisory board shall:

(a) Create and keep current criteria and science-based guidelines for use by division hearing examiners in making licensing determinations.

(b) Develop and promote assessment techniques available to healthcare providers to assist patients in driving-related issues.

(c) Assist the division in developing policy regarding medical conditions' effects on driving.

(d) Serve as liaison to the healthcare community in promoting best medical practices related to driving safely.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 145 ought to pass as amended. This bill establishes a medical/vision advisory board to advise the Director of the Division of Motor Vehicles of the Department of Safety. This legislation would allow for professional doctors and optometrists to advise the Director of Motor Vehicles on issues of impaired driving. This bill would also allow the advisory panel to address temporary medical circumstances that keep drivers from functioning safely behind the wheel. This amendment adds criteria for the panel, a licensed optometrist, and clears up language relative to mileage payments. The Transportation and Interstate Cooperation Committee recognizes the need for this process to be open and accessible to the public and that the state needs to make sure that health care personnel are educated regarding current rules, and are up to date on the science of evaluation. Please join the Transportation and Interstate Cooperation Committee and support Senate Bill 145. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

SB 178, designating a certain highway the Gold Star Mothers Highway. Transportation and Interstate Cooperation Committee. Re-refer to committee, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. I move Senate Bill 178 be re-referred to committee. Although this legislation certainly has our support, there are some "T's" that need to be dotted and some "T's" that need to be crossed. We ask that the necessary work be done and we certainly will resubmit this bill next year.

SENATOR BARNES: Thank you, Mr. President. I am not taking a shot at anybody. I don't have a question, Bob. It's not a question. Two or three years ago, my memory is slipping because I am getting old, this body passed a bill that is very near and dear to me. It was called the Purple Heart Highway Bill. I happen to hold a Purple Heart. I guess that's probably why it's near and dear to me. On my recent Senate break, I drove to Florida with my wife. As we hit Virginia and all through the southern states down through Florida, I kept seeing these beautiful signs, "Purple Heart Highway". A year or so ago I talked to the Commissioner of Transportation, and no knock on her because she is a wonderful person and has a wonderful department, I asked where the signs were. The answer was that they were being worked on. Now I am going to say this. Now, re-refer I am sure you folks had a reason to do it, but I want to bring it to your attention that we didn't re-refer the Purple Heart Highway. We voted for it and it still isn't in our state. So I am concerned about the Gold Star Mothers being re-referred because there is nothing in my mind that could be worse than a mother or father losing a son or daughter in the service of our country. I think the Gold Star Mothers are very important and I am know they have a reason, I am not knocking the committee at all. But we did pass a piece of legislation and I don't know, maybe somebody in the Transportation Committee can call up the Commissioner and say, "Senator Barnes raised a question on the floor, and before he dies, and he is getting old, he wants to see those signs in New Hampshire, that this legislature passed two or three years ago." It's overdue and I want to see it" Thank you very much.

SENATOR LETOURNEAU: Thank you, Mr. President and thank you, Mr. Barnes, Senator Barnes, for that comment. Nobody in this room would ever think low of veterans. I mean we all care about our veterans and, as a matter of fact, just at noon time today, Senator Barnes, I got the information from Carol Murray, the Commissioner of Transportation, on the Purple Heart Trail issues, because I was asked by the Veterans Advisory Committee where these were. I would be glad to relay that information to you. This is not a dead issue. It's an issue that we picked up on and we are certainly going to carry the ball on it.

SENATOR BARNES: My question is, would you believe, I think three years of passage is a long enough time to carry the ball. It was passed before you were in this chamber. You were across the hall at the time, Senator. I think it's time to move it and I don't think it's time for more discussion. The bill was passed and where are the signs? I want the signs up. Thank you very much, would you believe? And I was on the Advisory Committee before you were, sir. I was there before it was put together and I was there because I was a Purple Heart Veteran and I did carry the ball in the advisory committee and I know those guys want it. You got Bucky from Nashua, who is an old timer down there. You guys probably know Bucky Buckingham down there. He's probably going to be dead before he sees those signs, and he is one of the poor guys I want to see those signs for before he dies.

SENATOR LETOURNEAU: I'd believe you, Senator and...

SENATOR BARNES: It's time for action; it's not time for talk.

SENATOR LETOURNEAU: I agree with you. As far as the Gold Mothers Highway is concerned, those issues are being worked out and they will be bringing forth more legislation on that. Thank you.

SENATOR JOHNSON: Thank you, Mr. President, I just wanted to remind Senator Barnes that it didn't take the Department of Transportation long to get those signs up on the highway ever 2/10 of a mile.

SENATOR BARNES: Yes, I do. What was that you said? That one threw me.

SENATOR JOHNSON: Well, we have signs on the highway every 2/10 of a mile going up the state highway. Didn't you notice those signs?

SENATOR JOHNSON: Yes, I think you're right. I appreciate your support because that shows me that it's a sign of support. It's about time they get off their duff and get the thing that is real important up there.

SENATOR JOHNSON: Right.

SENATOR BARNES: Thank you, Senator Johnson, for your help.

Committee report of re-refer is adopted.

SB 194-FN-L, relative to the use of domestic steel. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 6-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 194 inexpedient to legislate. This bill requires the use of domestic steel in state and local public works contracts. The committee understands and commends the intentions of the sponsors, but feels that the Department of Transportation should be looking for the lowest priced

steel, which may or may not come from the United States, to best protect the interests of the taxpayers of New Hampshire. The Transportation and Interstate Committee asks for your support for the motion of inexpedient to legislate. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak on behalf of domestic steel. We've got a real problem in this country with loss of jobs and out placing. In New Hampshire we have very few fabricators left. Probably have one up in Berlin, Isaacson is still there. Farina Brothers is alive in Plymouth, but we have very few fabricators left because of the fact that they are being put out of business because of the dumping of imported steel in the marketplace. That's a real problem. Protecting the domestic market is something I think that is essential for all of us and all of us to think about. We, at one time, were one of the great steel producing nations in the world. We have lost that and we have lost that for a number of reasons. But what we have left is deteriorating and it is deteriorating to the point where you can't get domestic steel. I think that is a very significant problem; something we ought to think about. I know the cost differential is something that everyone considers, but the reason why the cost of differential is, is because what we are doing is, we are moving that domestic steel out to the side basket. There are so few people fabricating that the price has to go up because they are abandoning the purchasing of the domestic steel in favor of the imported steel. So I think it is something we should be concerned about. Something that we ought to think long and hard about, because once those domestic markets disappear, they will never be regained. Thank you, Mr. President.

SENATOR FLANDERS: Thank you, Mr. President and members of the Senate. Something that I learned and probably you all know it, I didn't know it. I will share it with you. That, if there is federal money involved in any of these construction sites, it has to be domestic steel. I didn't know that.

Committee report of inexpedient to legislate is adopted.

SB 25-FN, relative to the allocation of a portion of unrefunded road tolls to the dam maintenance fund. Ways and Means Committee. Inexpedient to legislate, Vote 4-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move Senate Bill 25 inexpedient to legislate. The issue addressed in the bill was dealt with in previous legislation and I move inexpedient to legislate on SB 25. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

SB 107-FN, relative to the sale of tobacco products. Ways and Means Committee. Re-refer to committee, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move re-refer on Senate Bill 107. The bill, as written, raises some issues that need to be looked at closely, particularly things like sales between retailers. It would ban the sale of tobacco products from one retailer to another and currently, we understand that the small retailers will go out and buy one case of some particular brand of cigarettes and then resell half the case to another store down the road, because they can't sell them in a fresh condition. Neither one can sell the whole case. This would ban that practice. This would also

make the retailers liable for a wholesaler not getting stamps on every single pack of cigarettes that is sold to them. It would make the retailer responsible for making sure that there were stamps on the cigarettes they got from the wholesalers. It puts a large burden on the retailers. So we need to look at this. So we are asking that you re-refer it to committee. Thank you, Mr. President.

SENATOR JOHNSON: Thank you, Mr. President. I just want to take a moment and thank the Ways and Means Committee for all the time they spent on this bill. I understand that those are issues that they are concerned about and I respect their vote of re-refer. But, in the bigger picture of what this bill suggests many checks and balances should be in place to stem the flow of illegal products into the state of New Hampshire, which really has an effect on our revenue stream. Even though the figures that we get from Senator D'Allesandro on the revenue stream look good on the tobacco, there's millions and millions of dollars there in illegal cigarettes that are coming in. Grey market, black market, whatever you might want to call it. The sooner that we address this situation the better off we are going to be. Thank you, Mr. President.

Committee report of re-refer is adopted.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 37, relative to disclosure of expert testimony.

SB 49-FN, including multiple sclerosis in the catastrophic illness program.

SB 62-FN, allowing court fees to be paid by credit card.

SB 64, establishing a committee to study small group health insurance plans.

SB 69-L, relative to certain insurance liens.

SB 93-FN, transferring the electricians board to the department of safety.

SB 108-FN, relative to newborn screening tests and fees for newborn screening tests.

SB 110-FN-A, establishing the New Hampshire Rx plus program for prescription drugs.

SB 112-FN, establishing a committee to study viatical settlements.

SB 113-FN, relative to the use of federal funds for technology improvements within the department of employment security.

SB 115-FN, relative to the transfer of responsibility for asbestos-related issues from the department of health and human services to the department of environmental services.

SB 124, relative to the regulation of real estate brokers by the real estate commission.

SB 128-FN, relative to the establishment of emissions reduction standards as required by the Clean Power Act.

SB 138-L, relative to motor vehicle liability for municipal workers.

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs.

SB 206-FN, relative to the state code of ethics and establishing an executive ethics commission.

SB 209-FN, relative to licensing of money transmitters and check cashers.

SB 215-FN, creating a committee to study banning the incineration of construction and demolition debris.

SB 223-FN, relative to licensing nondepository mortgage bankers and brokers.

SB 224, relative to the committee on judicial conduct.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 32, establishing a committee to study the feasibility of implementing the Second Chance drug rehabilitation program in the New Hampshire prison system.

HB 41, relative to the right-to-know oversight commission.

HB 43, relative to state employees appearing before the legislature.

HB 46-FN, relative to penalties for first-time DWI offenders.

HB 53, repealing a 1901 law relating to the apportionment of library funds in the town of Haverhill.

HB 61, extending the family law task force.

HB 83, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

HB 86, relative to property held in police department property rooms.

HB 148, transferring the New Hampshire estuaries project from the department of environmental services to the university of New Hampshire.

HB 153-FN, relative to the collection of debts owed to the state.

HB 157, establishing a commission to study procurement methods for public works projects by state and local government agencies.

HB 160, naming a certain bridge on New Hampshire Route 3 between Pembroke and Allenstown.

HB 168, relative to the licensure of electrologists and establishing an electrology advisory committee.

HB 194, establishing a study committee to examine regulatory practices pertaining to the telecommunications industry.

HB 204-FN, relative to unauthorized video surveillance.

HB 223, relative to the procedure for assignment of juvenile probation and parole officers.

HB 240-FN, relative to psychotropic drugs and child protection.

HB 242, relative to falsification of motor vehicle applications filed with the department of safety.

HB 252, requiring bail hearings for persons arrested for probation violations.

HB 265, relative to minutes of land use board meetings involving developments of regional impact.

HB 266, relative to the procedure for dismissal or suspension of a police chief.

HB 269, establishing a statutory committee for the protection of human research subjects.

HB 280, relative to the manner of service in divorce and child custody proceedings.

HB 382, establishing a committee to develop a strategic capital plan for department of corrections' facilities.

HB 439, relative to registration requirements for criminal offenders.

HB 443, relative to the statute of limitations for fire code violations.

HB 444, relative to the surrender and condemnation of game animals to the fish and game department.

HB 445, relative to the taking of certain game birds and fur-bearing animals.

HB 446, relative to applications for resident hunting or fishing licenses.

HB 456-FN, relative to inhaling toxic vapors.

HB 460-FN, relative to the reimbursement to certain providers by the bureau of emergency communications.

HB 540-FN, relative to the disposal of real property purchased with highway or turnpike funds.

HB 568, establishing the greater Derry-Salem cooperative alliance for regional transportation.

HB 574-FN, requiring the reporting of burn injuries.

HB 603-FN-A, relative to the state's purchase of the Laconia district courthouse building and making an appropriation therefor.

HB 604-FN, discontinuing the use of tokens.

HB 625-FN-L, authorizing borrowing from the state revolving loan fund for the Winnepesaukee River Basin project.

HB 692-FN-L, relative to the county department of corrections.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 32 to 692, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 32, establishing a committee to study the feasibility of implementing the Second Chance drug rehabilitation program in the New Hampshire prison system. (Internal Affairs)

HB 41, relative to the right-to-know oversight commission. (Judiciary)

HB 43, relative to state employees appearing before the legislature. (Internal Affairs)

HB 46-FN, relative to penalties for first-time DWI offenders. (Judiciary)

HB 53, repealing a 1901 law relating to the apportionment of library funds in the town of Haverhill. (Education)

HB 61, extending the family law task force. (Judiciary)

HB 83, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus. (Public and Municipal Affairs)

HB 86, relative to property held in police department property rooms. (Public and Municipal Affairs)

HB 148, transferring the New Hampshire estuaries project from the department of environmental services to the university of New Hampshire. (Energy and Economic Development)

HB 153-FN, relative to the collection of debts owed to the state. (Banks and Insurance)

HB 157, establishing a commission to study procurement methods for public works projects by state and local government agencies. (Public and Municipal Affairs)

HB 160, naming a certain bridge on New Hampshire Route 3 between Pembroke and Allenstown. (Transportation and Interstate Cooperation)

HB 168, relative to the licensure of electrologists and establishing an electrology advisory committee. (Public and Municipal Affairs)

HB 194, establishing a study committee to examine regulatory practices pertaining to the telecommunications industry. (Energy and Economic Development)

HB 204-FN, relative to unauthorized video surveillance. (Judiciary)

HB 223, relative to the procedure for assignment of juvenile probation and parole officers. (Judiciary)

HB 240-FN, relative to psychotropic drugs and child protection. (Education)

HB 242, relative to falsification of motor vehicle applications filed with the department of safety. (Transportation and Interstate Cooperation)

HB 252, requiring bail hearings for persons arrested for probation violations. (Judiciary)

HB 265, relative to minutes of land use board meetings involving developments of regional impact. (Public and Municipal Affairs)

HB 266, relative to the procedure for dismissal or suspension of a police chief. (Judiciary)

HB 269, establishing a statutory committee for the protection of human research subjects. (Public and Municipal Affairs)

HB 280, relative to the manner of service in divorce and child custody proceedings. (Judiciary)

HB 382, establishing a committee to develop a strategic capital plan for department of corrections' facilities. (Internal Affairs)

HB 439, relative to registration requirements for criminal offenders. (Judiciary)

HB 443, relative to the statute of limitations for fire code violations. (Judiciary)

HB 444, relative to the surrender and condemnation of game animals to the fish and game department. (Environment and Wildlife)

HB 445, relative to the taking of certain game birds and fur-bearing animals. (Environment and Wildlife)

HB 446, relative to applications for resident hunting or fishing licenses. (Environment and Wildlife)

HB 456-FN, relative to inhaling toxic vapors. (Education)

HB 460-FN, relative to the reimbursement to certain providers by the bureau of emergency communications. (Energy and Economic Development)

HB 540-FN, relative to the disposal of real property purchased with highway or turnpike funds. (Transportation and Interstate Cooperation)

HB 568, establishing the greater Derry-Salem cooperative alliance for regional transportation. (Transportation and Interstate Cooperation)

HB 574-FN, requiring the reporting of burn injuries. (Judiciary)

HB 603-FN-A, relative to the state's purchase of the Laconia district courthouse building and making an appropriation therefor. (Capital Budget)

HB 604-FN, discontinuing the use of tokens. (Transportation and Interstate Cooperation)

HB 625-FN-L, authorizing borrowing from the state revolving loan fund for the Winnepesaukee River Basin project. (Environment and Wildlife)

HB 692-FN-L, relative to the county department of corrections. (Judiciary)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

March 31, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! It seems to me like you are required to spend almost all of your time over here dealing with one issue - money. Does that sound right to you? How to get it, how not to get it, how to spend it, how not to spend it. Our resident living room elephant in New Hampshire, which is education, is mainly a conversation about how to pay for it. If you hope to be sitting where you're sitting two years from today, hopefully you have had some fundraising ideas come into your mind - money. And, if you have haven't, you'd better start thinking about it. And the list goes on and on and on. Boxing great Joe Louis once said, "I don't like money, actually, but it quiets my nerves". In my experience, however, that's not the way it is for most people. The less money you have, the more frightened you get and by the ever increasingly frantic search for enough, you're distracted. The more money you have, it seems, the greater the distraction and even obsession about how to spend it, how to hold onto it, and how to get more of it. Isn't it interesting how worked up we get about money? Money does matter a lot, especially in this place, because it represents options, and choices, and degree of freedom for those who have it. But I invite you to remember the words of a second century African Christian named Tertullian, who said this. "Nothing that is God's is obtainable by money". Seems to me that would include things like respect, compassion, love, wisdom and courage. You were sent here to include some of those things like in the bottom line as well.

Let us pray:

Lord of limitless abundance, let us spend down our lives in ways that do not deplete us or others but rather that endow us with riches available only through You.

Amen

Senator Gottesman led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 38, relative to theft of personal checks and credit cards.

HB 55-FN-A, relative to industrial hemp and establishing an industrial hemp special program fund.

HB 118, relative to bicycle helmet use by certain minors.

HB 129-FN-L, establishing a high performance school incentive.

HB 138-FN, requiring medical examiners to inventory and account for property taken from decedents.

HB 141-L, relative to the planning board's authority to limit building permits.

HB 147, relative to the death penalty.

HB 151, requiring school districts to develop a school age nutrition and physical activity committee.

HB 411, relative to the North Conway water precinct.

HB 499, relative to participation in and administration of the Manchester employees' contributory retirement system.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House legislation numbered 38-499 shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 38, relative to theft of personal checks and credit cards. (Banks and Insurance)

HB 55-FN-A, relative to industrial hemp and establishing an industrial hemp special program fund. (Environment and Wildlife)

HB 118, relative to bicycle helmet use by certain minors. (Transportation and Interstate Cooperation)

HB 129-FN-L, establishing a high performance school incentive. (Education)

HB 138-FN, requiring medical examiners to inventory and account for property taken from decedents. (Public and Municipal Affairs)

HB 141-L, relative to the planning board's authority to limit building permits. (Public and Municipal Affairs)

HB 147, relative to the death penalty. (Judiciary)

HB 151, requiring school districts to develop a school age nutrition and physical activity committee. (Education)

HB 411, relative to the North Conway water precinct. (Environment and Wildlife)

HB 499, relative to participation in and administration of the Manchester employees' contributory retirement system. (Banks and Insurance)

COMMITTEE REPORTS

SB 121, relative to all terrain vehicle trails and relative to the regulation of off highway recreational vehicles by a political subdivision. Environment and Wildlife Committee. Inexpedient to legislate, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 121 be found inexpedient to legislate. Senate Bill 121 changes the protective radius around public water wells and would also exempt OHRV trails on private property from planning board review. While the committee acknowledges that the current 4,000 foot radius was passed due to an error, we heard testimony that 400 feet does not provide enough protection for the public water supplies. In addition, planning board review for OHRV trails is an issue of local control and should be left to our towns. The Environment and Wildlife Committee asks your support for the motion. Having said that, I am going to ask you all to vote against that

motion. I would like to say that we have an amendment that Senator Flanders would like to bring out and we have to vote this down, against the inexpedient motion so he can bring it out. It addresses a comment in this blurb which I think is very good. It talks about local control. Well what this amendment that Senator Flanders is going to propose to us, it certainly is local control. So I would appreciate it if you folks could vote against the inexpedient motion so we can get the amendment on the floor. Thank you.

SENATOR JOHNSON: Thank you, Mr. Chairman. As chairman of the Environment and Wildlife Committee we did have that discussion that Senator Barnes brought forward. At the end of the day we decided that we would look at it with Senate Bill 5, which is a study of the whole park system. So having said that, I think there was a legitimate concern about the 400 feet. The letter that we were given just recently was a letter that was sent to George Bald, who is no longer the commissioner of the department. So I am not sure that...I would probably like to have something a little more updated than that. So I am going to be voting with the inexpedient to legislate and I hope my colleagues will do that also.

SENATOR FLANDERS: Thank you, Mr. President. If I may, I understand what Senator Johnson is saying, but I don't think my amendment affects the study committee on state parks at all. May I speak to the amendment what it's going to do at this point?

SENATOR EATON (In the Chair): The amendment has not been passed out. You can give us a generality.

SENATOR FLANDERS: I urge you to defeat the ITL and let's discuss the amendment. If I may, this is a situation that has been going on in this chamber since I have been here. We do have a chance to look at an amendment that may fix it. I think that we ought to discuss it. I think we ought to see what we can do for this situation. It's here, it's not going to go away. I would like to have a chance to explain the amendment and what it does. Thank you.

SENATOR HASSAN: Good morning, Mr. President and thank you. I, too, am a member of the Environment Committee. I am standing in support of the motion to ITL, and I agree with the chairperson of our committee. We did hear a variety of opinions about the issue of what the appropriate buffer zone for ATVs is. It is something we need to discuss, but it is an issue that we are going to have to deal with in more than one area of the state, and more than one locality of the state, and I think a study committee where we can hear from our environmental and other experts, and the ATV community, on a statewide basis, that we can begin to think about it appropriately that way, is the place for us to deal with this issue. I agree with Senator Flanders that it is an issue that we need to resolve, but I don't think this amendment is going to help us do it in a thoughtful way. So I urge people to vote for the inexpedient to legislate.

A division vote was requested.

Yeas: 11 - Nays: 12

Motion failed.

Senator Flanders moved ought to pass.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

March 30, 2005

2005-0975s

04/10

Floor Amendment to SB 121

Amend the bill by replacing section 2 with the following:

2 ATV and Trail Bike Operation on State Lands; Evaluation Process.
Amend RSA 215-A:43, I(c) to read as follows:

(c) If it is to be a self-contained trail network, at least 700 contiguous acres are available within which the trail network can be situated, in either single state ownership or as a combination of abutting state properties. ***If the contiguous acreage of the state property is more than 45 percent of the total land base of a single municipality, the local governing body of that municipality shall review and approve any proposed trail development.***

2005-0975s

AMENDED ANALYSIS

This bill amends a step in the evaluation process for all terrain vehicle (ATV) trail approval by requiring that a proposed ATV or bike trail shall not pass within 400 feet of a water well supplying a public water system.

This bill also provides circumstances under which a municipality's governing body shall review and approve proposed trail development.

SENATOR FLANDERS: Mr. President, I move ought to pass with amendment and I would like to present an amendment. Move ought to pass. What happened, just a very brief history. This is a study of when I first came to this chamber, I was put on a study committee to study ATV's. It lasted two years. As a result of that study, 400 feet was recommended, and the letter that the Senator is referring to is a letter that was written saying that 400 feet radius around a public well. During the legislative process, a mistake was made to 4,000 feet. Commissioner Nolin who still is here, and I am sure his opinion has not changed, has said that this is way out of line with all other regulations around a well head. For instance, state law does not prohibit roads, automotive facilities, any other recreational land use beyond the 400 feet. So I think, I know the Department of Environmental Services has told us that 400 feet is okay and they say that today. They said it a year ago and six months ago and today. Now, what happened was we sat down yesterday, that's why this amendment was not put out before. It was Senator Barnes, who everybody knows Senator Barnes position on this. The Senator from Berlin, and DRED, and we said, what can do? What we have is a situation of 40,000 of these things. I don't care if we are 24-0 that we don't like them. They are here. And because of this mistake of one zero, we are not building trails for them. We are not building trails up north where they want them, because they can't within the 4,000 feet. So we are taking registrations from these people, which is a tidy sum, and we are not giving anything back. I think that is wrong. We have a chance to fix it. We have a chance to start building trails. We also have a chance under this to study the state parks. It doesn't preclude studying state parks at all. What this amendment does is it just says that if there is any town that 45 percent of it is made up, in any municipality, then the governing body of that municipality, shall review and approve any proposed trail development. We haven't named any names, but everybody knows what town it is and state park it is. They

have come and they have testified against and against and against this. They are agreeable to this. Senator Barnes has checked with the powers that be and this is a way out. Now, if you want to take it, fine. If you don't want to take it, I guarantee it's going to come back. We have a chance to fix it. We have a chance....we are more than happy to take their money. We love their money coming in. Fish and Game loves their money, DRED loves their money and we said that we would make trails for these people and we are not doing it. So I ask you to consider passing this. Let us get going. Let us get started to do what we said we would do. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Flanders, during our conversation yesterday, and I don't think I heard it here on the floor, there was a section of this bill that's also taken out concerning the Lyndeborough situation. There is a Senator here in this chamber that represents that town. So, could you explain what this amendment does to that part of the piece of legislation?

SENATOR FLANDERS: The original bill has a portion in there that's saying that these trails are not subject to planning board authority, and we are taking that out. There was a lot of opposition to that. Those in DRED and those that are trying to do trails, feel it is much more important to get going with trails, and we are taking that last part out. Basically all we are saying is let us get going. Let us get up north. Let us put trails where people want to put them. And the planning board portion is taken out of this bill.

SENATOR BARNES: Senator Flanders, thank you very much.

SENATOR FLANDERS: Thank you.

SENATOR HASSAN: I rise in opposition to the ought to pass and to this amendment. I do not have a personal objection to ATVs and I understand that people are paying registrations. I understand that people want to build trails. The testimony that was compelling for me at committee, was the testimony that ATVs are different than other recreational vehicles and the 400 foot limitation, which is applied for instance for snowmobiles, is not a perfect application for ATVs because the ATVs go off the trail, and therefore, sometimes go closer than the 400 feet which is why the consistent testimony that we heard from most witnesses was at somewhere between 400 feet and 4,000 feet was probably the right solution. I would love to help reach a solution on this. I want people who want ATV trails to have them, as long as we protect our water sources in doing it in the right way. So I urge my colleagues to vote against the ought to pass.

SENATOR ESTABROOK: Thank you, Mr. President. I just wanted to ask Senator Hassan to clarify for me one effect that this amendment will have from what you just said, am I right, is that the current requirement is that these trails be 4,000 feet from a water well supply of a public water system and this will reduce that by ten times to 400 feet?

SENATOR HASSAN: That is my understanding because the first section of the bill reduces that limitation. This is an ought to pass with amendment and the first section of the bill still stands. As I indicated, we heard testimony about why the 400 foot limitation may not be the reasonable one for ATVs and that is what is motivating my position today.

SENATOR ESTABROOK: Thank you.

SENATOR FLANDERS: Senator Hassan, I understand you're saying that you think 400 feet is too close because ATVs go off the trail. I know

it's a stupid question, but there is no such thing. Is that right? If you go 4,000 feet, what's going to keep them from going off the trail and going by the well heads?

SENATOR HASSAN: That's a good question that I don't know the answer. I just think that if you have a trail that is 4,000 feet from a well head, I think it's a lot less likely that you will go off the trail for a mile or two to get closer to a well head. That's the commonsense response I can give.

SENATOR JOHNSON: Thank you, Mr. President. I have a question for Senator Flanders. Senator Flanders could you tell me how you arrived at the 45 percent of the total land base of a single municipality and how much state property that that affects and why would we not go to a study committee if this was that much of a change, to give the other towns this opportunity to have a public hearing?

SENATOR FLANDERS: We were told by DRED that there is only one town that has 51 percent of their town mass made up of this public land. Allenstown. That is what this affects. We were told that no other town has the same situation. So what this amendment does, is put out there clear as a bell, is the opposition to the 400 feet, mainly from the town of Allenstown because of the well headed Bear Brook and we have solved that problem. You can go back in your study committee and you can amend this. You can do whatever you want to do in your study committee, but this allows trails to start this summer.

SENATOR BARNES: Question of Senator Flanders please, Mr. President. Senator Flanders, Senator Johnson's question is a good one on the percentages and we talked about that yesterday. We asked DRED how many parks have that same situation as Allenstown. You're absolutely right. He said in his opinion, what he found was zero. Then I said something about well the north country seems to have a lot of parks up there, what about that? His comment, correct me if I am wrong, or I guess my question to you is, did I hear it right, that a lot of the ones up north have federal parks, national parks, but don't have anything to do with this piece of legislation, so therefore the towns up there aren't tied into this. Would you believe?

SENATOR FLANDERS: You are correct. That is exactly what he said, that there would be federal land and that the areas in the north country that are federal land would not...this amendment or this bill would not affect it in any way.

SENATOR BARNES: Thank you very much.

SENATOR LARSEN: I rise to speak both to the bill and to the amendment. I voted not to pass...I am sorry, for the motion of inexpedient to legislate. I believe that we do in fact need to solve the ATV trail issue; however, I have concerns that we are in fact reducing the distance from well head protection down and reducing them out of local control communities have over the placement of trails. If you look at the Department of Environmental Services own Environmental Fact Sheet, they talk about the purpose of well head protection to prevent the contamination of groundwater used for drinking water. The well head protection area is a surface and sub surface surrounding a public water supply. They, in their own standards, say that well head protection, the appropriate well head protection delineation is a 4,000 foot radius in their own fact sheet. There's a reason for that. We already know how MTBE has leaked and has the ability to travel great distances and contaminate wells. As ATV's cross through our, whatever trails they are on,

going by well heads and they have to stop perhaps to refill. Are they spilling MTBE which then enters ground waters? There are significant issues, and I do not sit on the Environmental Committee, but I believe that probably somewhere the number lies, somewhere between 4,000 feet and perhaps something less, but I can't make that judgment. I do believe though that our interest as a state is to protect our groundwater, and to make sure that we are in fact doing the best we can based on the best science that we have. The amendment protects one state park and importantly protects the town of Allenstown and the town of Pembroke, which I represent. Why are we protecting them? Because we are concerned for their groundwater. They have well heads in Bear Brook State Park. They are concerned that they will in fact have contaminated wells. We know from our groundwater studies that, in many areas of New Hampshire, groundwater is fed through many ways and it doesn't necessarily...with MTBE traveling as it does, in great distances, the issue of where the wellhead is, may not be such an issue, it may be that we are actually contaminating deep ground water supplies. Those issues need to be resolved. We have MTBE in our fuel stream until 2007. Are we going to allow trails to go in where they may in fact, where MTBE may get into those pristine areas of our forest and contaminate groundwater supplies for great lengths of time? So I oppose the idea that we are going to lower groundwater protection down to a 400 foot standard for well head protection. I oppose this measure in that it will remove local control from municipal government. I support the idea that we are going to protect Pembroke and Allenstown, but I think that it is our job to look at the whole picture of the state and so I urge you to vote the final Senate Bill 121 inexpedient to legislate.

SENATOR FULLER CLARK: Yes, please. I have a question for Senator Barnes. Thank you, Senator Barnes. Senator Barnes, I noticed that, in the notes from the hearing, that there was a suggestion that Bear Brook State Park be given an exemption if the bill were to pass. And that Senator Barnes, that you thought that this might be a good concept, but had problems with the piece meal legislation, and that there was also a question as to whether an exemption would be constitutional. It is my understanding, in looking at your amendment, that the only place it would exempt is Bear Brook State Park. I am wondering if you could comment upon those remarks that you made during the committee hearing. Thank you.

SENATOR BARNES: By gosh, you do your homework, Senator. God bless you. Yes, I did make those comments. The transcript was correct. I did have a little bit of a problem, actually a big problem with the constitutionality of it. As I sat with Senator Flanders and some other folks, folks with some legal background, it was my understanding that, in their opinion, it's okay. Whether it is or not, God knows. I am not a lawyer. We have five lawyers here in the chamber, and each one of them might have a different opinion of that. That's my answer to you. Yes, I said it. Yes, I now feel comfortable with what came out after what I said.

SENATOR FULLER CLARK: Thank you, Senator Barnes. Is it also true that this amendment as coming forward would only impact on the Bear Brook State Park?

SENATOR BARNES: Well, based on what I heard yesterday, Senator, the Department says that, in their opinion, that there is only one state park in the state that this piece of legislation would cover, unless you perhaps, through due diligence, can find another one. I would have to say yes.

SENATOR FULLER CLARK: Thank you very much.

SENATOR BOYCE: Senator Flanders, it all seems to be coming down to this 400 foot radius around well heads. I am wondering what other things other than ATV trails are allowed within that 400 foot radius? I am thinking of my town of Alton where we have I think, two public water supply well heads. I know that one of them is just a few hundred feet from Route 28, which I am sure is, you know, the activity of rebuilding Route 28 last year, was probably much more intensive than any usage from ATVs. And, the other one I believe is only a few hundred feet from our fire department where they have all their vehicles that they are washing the soot off of the fire trucks after they have been at a fire. I am wondering if that activity is probably more intensive and more of a problem than an ATV trail going near a well head. What other things can be done within 4,000 of a well head?

SENATOR FLANDERS: Thank you. In a letter, Commissioner Nolin said that "prohibiting ATV use in a larger area is inconsistent with other land use restrictions in well head protection." He is referring back to the 400 feet. He goes on to further say, "for instance, state law does not preclude roads, automotive facilities, or any other recreational land use beyond this 400 feet." So you are right. You can have a road within 400 feet. You can have a fire station, you can have an auto repair place where they are changing oil and so forth, within 400 feet.

SENATOR BOYCE: In thinking about 4,000 feet, I know that one of the well heads in Alton, 4,000 feet from that well head, takes in just about the whole village of Alton, which includes three gas stations, the Dunkin Donuts, the school, the fire station, Route #11, Route #28, Route #140. I think all of those things are within that 4,000 range. It doesn't seem that probably those activities are somehow more environmentally concerning than ATV trails.

SENATOR FLANDERS: I would agree with you, Senator.

SENATOR KENNEY: I rise against the amendment that is on the floor right now. I must first say that I am not opposed to ATVs, although a proliferation of ATVs in the state of New Hampshire, I think that we need to balance that issue. But, I am more concerned about the process. This bill was before our committee a year ago in Transportation and, at that time, there was a lot of opposition from the Allenstown citizens, along with the New Hampshire Municipal Association, from changing the 4,000 foot setback for the well head protection area to 400. I understand that this is a deal that has been brokered and most parties agreed to that for this amendment. But I am concerned that the New Hampshire Municipal Association has not been involved in this amendment. I also have heard that we have increased fees to pay for trails in the state of New Hampshire. It is my understanding that we increased those fees because it was for enforcement. It was for looking at the ATV master plan and coming up with ways of increasing trails, but not necessarily be a mandate. So, with that understanding of not all the parties being involved in this amendment and giving their approval, and the fact that I believe that there are some other questions to the amendment that we could answer, that I would again, be opposed to letting this amendment going forth.

SENATOR BARNES: No, I don't wish to ask the question. I'm all squared away.

SENATOR HASSAN: Thank you, Mr. President. I rise for a second time, simply first to echo Senator Kenney's comments about process, but also

to say the very debate that we are having on the floor today, about what is allowed within 400 feet, what is not, is exactly the kind of discussion that we should be having with all the parties at the table, in a thoughtful process to come up with the appropriate buffer, given the unique nature of ATVs. I would welcome us as a state to do that in a thoughtful way. I think the debate this morning shows that we have more work to do before we know what the appropriate policy is. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. Your statement, Senator Hassan, is that you would like to have the state come up with a way to do it. Well they have. In 2004 they came up with the 400 feet. I guess I have to give a little history here. I think that maybe people have forgotten. I believe two years ago I came in with an email that said, "I apologize for making the mistake of writing 4,000." This is a mistake. If you remember, the blurb that Senator Barnes said they acknowledged that a mistake had been done. I can't believe we have this much problem trying to fix a mistake. I don't think that we're looking at this correctly. A gentlemen or a lady, whoever it might have been, we crossed out the name, wrote and said, "I am sorry. I put a zero in and I shouldn't have." A study committee of two years recommended 400 feet. We recommended 400 feet because the people in the state of New Hampshire told us 400 feet. We are trying to fix a mistake. I just don't understand that we have just spent three quarters of an hour trying to fix a mistake that we spent an hour and we couldn't fix last year. This is a way to fix it. A way to get going. But the history is 4,000 feet has never been written in sand, never been agreed upon, but it was a mistake. And the letter here, if anybody wants to see it. It says here, "The agencies and I have gotten together and they researched it and they say 400 feet." They let roads...I don't care what we do here. They can build a road 400 feet from the well head. So it doesn't make any difference what we do here. The other situation I have is, if we do not pass this today, nothing is going to be done for another year. There is no bill out there and this study bill that Senator Johnson is talking about for state parks, isn't going to have anything to do with this. It is going to study state parks. It's not going to study ATV trails. So it's going to set for another year and you're going to have 45,000 of them next year with no place to go 'cause they are still coming in. Thank you.

SENATOR JOHNSON: I have a question of Senator Flanders. Senator Flanders, who are the people of New Hampshire that agreed to the 400 feet? We had a lot of people at the hearing that we had in Environment and Wildlife that question that 400 feet.

SENATOR FLANDERS: I gave you a copy of the letter in caucus and that is what I am relying on signed by Commission Nolin. Before I left to go downstairs, I left this in the caucus, signed, sealed and delivered, that 400 feet is the correct number recommended to our subcommittee.

SENATOR JOHNSON: Yes. And that's the people of New Hampshire, that letter?

SENATOR FLANDERS: The testimony I'm hearing today, Senator, is the state ought to decide what's right. They did.

SENATOR BURLING: Thank you, Mr. President. I hate starting out a day when I am so confused that I really can't follow the policy discussion terribly well. There are elements I am hearing from both sides of this debate that are worthy of real consideration on my part. As I survey your faces, I see others who are sort of saying, yeah, gee. With that in mind, I would like to move that we table the bill.

MOTION TO TABLE

Senator Burling moved to have SB 121 laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Burling.

Seconded by Senator Larsen.

The following Senators voted Yes: Johnson, Kenney, Burling, Flanders, Odell, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Boyce, Green, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 12 - Nays: 12

Motion failed.

The question is on the adoption of the floor amendment.

Adopted.

The question is on the adoption of the bill as amended.

A roll call was requested by Senator Kenney.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Johnson, Kenney, Burling, Odell, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 13 - Nays: 11

Adopted.

Ordered to third reading.

SENATOR FLANDERS (Rule #44): Mr. President, I am glad that when I make a mistake at home that my wife doesn't hold it against me as long as this ATV trail thing has.

SB 122, relative to the procedure for approval of solid waste facilities. Environment and Wildlife Committee. Inexpedient to legislate, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I hope this doesn't take as long as the last one I introduced. I move Senate Bill 122 be found inexpedient to legislate. This motion comes at the request of the prime sponsor and the Department of Environmental Services. The Environment and Wildlife Committee asks your support for the motion of inexpedient to legislate. Thank you very much.

Committee report of inexpedient to legislate is adopted.

SB 179, requiring hunters to report the death or injury of domestic animals. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-1. Senator Hassan for the committee.

Environment and Wildlife**March 23, 2005****2005-0893s****08/09****Amendment to SB 179**

Amend the bill by replacing section 1 with the following:

1 New Section; Reporting the Death or Injury of Domestic Animals. Amend RSA 207 by inserting after section 39-a the following new section:

207:39-b Reporting the Death or Injury of Domestic Animals. Any person, while actually engaged in hunting or in pursuit of wild animals or wild birds who shall cause death, injury, or damage to domestic animals through the discharge of a firearm or bow and arrow shall report the death, injury, or damage to such domestic animals to the local police department.

SENATOR HASSAN: Thank you, Mr. President. I move Senate Bill 179 ought to pass with amendment. Senate Bill 179 will require hunters to report the death or injury of domestic animals. The committee heard moving testimony of instances where pet dogs were shot by hunters and left to die while the family searched for their missing pet. And I will note that some of the testimony also indicated that young family members went out into the woods where hunting was going on to look for the family pet, exposing them to further risk. The committee also heard that people are required to report if they hit a dog or other large animal with their car. Hunters should have to give pet owners the same courtesy. The committee amendment removed language concerning domestic ducks and fowl and removed a potentially problematic requirement that the hunter render "reasonable aid." The Environment and Wildlife Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 187, relative to allowing alternative certified hazardous waste coordinator programs. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move Senate Bill 187 ought to pass. Senate Bill 187 will allow alternative certified hazardous waste coordinator programs. This bill will provide the department the flexibility it needs to work effectively with large companies and their hazardous waste programs. The bill does not water down the program in any way. It will serve to enhance the effectiveness of our hazardous waste coordinator program. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 86, permitting on-site samples and retail sales by liquor manufacturer licensees. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Barnes for the committee.

Senate Executive Departments and Administration
March 23, 2005
2005-0903s
03/09

Amendment to SB 86

Amend the bill by replacing section 1 with the following:

1 Liquor Manufacturer License. Amend RSA 178:6 to read as follows:
178:6 Liquor Manufacturer License.

I. A liquor manufacturer licensee may ferment, distill, blend, age, and bottle liquor other than wine in this state. A liquor manufacturer licensee may sell the liquor it manufactures to the commission for resale in this state.

II. No liquor manufactured, blended, or bottled in this state by any manufacturer shall be sold or delivered in this state in any manner which is inconsistent with the provisions of this title.

III. Each liquor manufacturer distilling less than 5,000 cases of liquor per year shall have the right to sell at retail at its facility for off-premises consumption any of its liquor. Each retail sale shall be limited to one 9-liter case or less per sale. No liquor manufacturer shall sell more than 12 9-liter cases of liquor to any one customer in any calendar year.

IV. A liquor manufacturer may provide to visitors at its facility samples of liquor for tasting. Samples shall not exceed ½ ounce, and shall not be provided to any persons under 21 years of age.

V. Notwithstanding paragraph III, no liquor manufacturer shall sell at its facility any of its liquor to on-premises licensees.

VI. Each liquor manufacturer shall maintain records and prepare reports for the commission which shall indicate the sales made under paragraph III and shall pay to the commission monthly a fee equal to 8 percent of such sales on or before the tenth day of the month following the sale.

VII. The commission shall adopt rules, pursuant to RSA 541-A, relative to reports of liquor manufacturers under paragraph VI.

[HH.] *VIII.* Each liquor manufacturer shall have the right to transport the liquor it manufactures, blends, or bottles in bottles or other closed containers to the state border for transportation and sale outside the state to holders of a United States basic permit issued under the Federal Alcohol Administration Act.

2005-0903s

AMENDED ANALYSIS

This bill permits liquor manufacturer licensees to sell liquor at retail for off-premises consumption. This bill requires the licensee to report the sales to the commission and establishes a tax on the sales.

This bill also permits liquor manufacturer licensees to provide samples to visitors at its facility.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 86 ought to pass with amendment. This legislation would allow a liquor manufacturer to provide visitors a sample for tasting that would not exceed ½ ounce and would not be provided to anyone under 21 years of age. The Liquor Commissioner was concerned with Section IV, which would allow the manufacturer to sell at retail at their facility. This legislation is not intended to compete with state liquor stores. The amendment addresses the Commissioner's concerns by requiring the licensee

to report the sales to the Commission and it establishes a tax on the sales. The ED and A Committee asks your support for the motion of ought to pass with amendment. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 190-L, relative to workforce housing opportunities. Executive Departments and Administration Committee. Re-refer to committee, Vote 6-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Mr. President. I move Senate Bill 190 be re-referred to committee. The bill clearly establishes that all communities have an obligation to ensure that their land use policies provide reasonable and realistic opportunities for the development of workforce housing. It recognizes that the rejection of a proposal for the development of workforce housing may require judicial review. It does not create statewide zoning or mechanisms to override local regulation processes. Most importantly, it would not prohibit **TAPE CHANGE** communities from enacting responsible and reasonable policies designed to guide or manage growth or protect natural resources and quality of life. The committee understands the need for affordable housing, but they and the sponsors continue to be concerned how it might affect local control over housing proposals. By re-referring, we hope this issue can be addressed and we will be able to move forward with a reasonable legislative solution. Thank you.

Committee report of re-refer is adopted.

SB 199, establishing exemptions from certain administrative requirements for the department of regional community-technical colleges. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-1. Senator Kenney for the committee.

Senate Executive Departments and Administration

March 23, 2005

2005-0902s

04/03

Amendment to SB 199

Amend the bill by replacing all after section 4 with the following:

5 Repeal. RSA 188-F:13-a, relative to the department of regional community-technical colleges' exemption from a hiring delay, hiring freeze, prohibition on equipment purchases, and departmental budget reduction order, is repealed.

6 Effective Date.

I. Section 5 of this act shall take effect July 1, 2007.

II. The remainder of this act shall take effect July 1, 2005.

2005-0902s

AMENDED ANALYSIS

This bill allows the department of regional community-technical colleges to:

I. Accept and expend any federal moneys or private grant funds without the approval of the governor and council or meeting the computation of indirect costs requirements.

II. Enter into contracts for food and vending services, after competitive bidding, at any of its campuses.

III. Be exempt from any hiring delay, hiring freeze, equipment purchase freeze, or budget reduction order until July 1, 2007.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 199 ought to pass with amendment. This bill is intended to enable the New Hampshire Community Technical College System to function more fluently and efficiently. It creates a statutory exemption from equipment purchases and hiring freezes, an exemption for OIT purchasing, independent authority to accept and to implement grants, exemptions for the indirect cost fee on grants, and the authority to contract after competitive bidding for any food service operations at any of the New Hampshire Community Technical College System's institutions. Currently, these issues are impeding the system's ability to provide the students with the essential and/or necessary training and equipment. The amendment would place a two year exemption from the hiring freeze on a trial basis, after which time they could come back to the legislature to show what they were able to accomplish with this exemption. The ED and A Committee asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator Kenney, just reading this, the repeal of the repeal, because that is basically what this says. Number five says "repeal". And the last wording in that sentence is "repeal". And that repeal doesn't take effect until 2007?

SENATOR KENNEY: What's the line number, Senator Gatsas?

SENATOR GATSAS: I don't have an amended version. I am looking at the amendment. The first word in section five says "repeal". The last two words in section five says "is repealed". So is that a repeal of a repeal?

SENATOR KENNEY: No. That's not what I read, Senator Gatsas.

SENATOR GATSAS: It doesn't take effect until 2007?

SENATOR KENNEY: Right.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 89-FN, relative to financing federally aided highway projects. Finance Committee. Ought to pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 89 ought to pass. Senate Bill 89 allows the use of GARVEE Bonds in highway projects, such as the much-needed widening of I-93 from Manchester to Massachusetts. These bonds generate upfront capital allowing for greater cash on hand to create and sustain construction. The construction timeline of I-93 will be cut by a quarter to a third. GARVEEs are a way for the state to finance debt by issuing notes that are guaranteed by federal highway funds received in the future. Instead of reimbursing construction costs as they are incurred, the reimbursement of GARVEE bonds occur when the debt service is due. This legislation is instrumental in accelerating the widening of I-93. The Finance Committee asks for your support of the motion of ought to pass.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the legislation. I think that all of us understand the problems with I-93, particularly from Manchester to the Massachusetts border. The GARVEE bonds are an innovative concept that financially allows us to do things in terms of getting this road prepared to accept the traffic that is now occurring and to advance it in terms of its workload. It's a very, very significant project. Very significant project. Very significant methodology for financing and it's been done in other states. It's creative and innovative and I think it's appropriate at this time. The demonstrated need is there. The economic impact of the restructuring of this road, I think, would be significant. The Manchester airport has become the most significant new economic engine for this area of New England with enormous increases in passenger traffic. This will allow for that traffic to flow much more freely. So I support the concept. I think it is very worthwhile. It is something that our state treasurer is in concert with. I think that it is very creative and innovative, and I commend the chairman of the Finance Committee for bringing this forward. Thank you, Mr. President.

SENATOR GATSAS: Senator Morse, can you very quickly give me an idea of the oversight in this piece of legislation because I know that there is a companion bill coming over from the House? My understanding is that Senate Bill 89 has an oversight piece and could you talk about that please?

SENATOR MORSE: There is actually two pieces. The House would argue that the limit of \$195 million is their oversight, which is in this bill also. But, on page seven on line 25, the Department of Transportation has to submit to Capital Budget every six months. This has worked with the university system and that's why, when we had the study committee this summer, we put it into this legislation. So it's in here.

SENATOR GATSAS: So what you're saying is that they are going to produce an excel sheet that's going to show us where the project is and how much money's been drawn on the \$195 so that we all have that understanding?

SENATOR MORSE: Yes. I think it will be a little more detailed than that. I actually have spoken to the engineering firm that they hired and said I wanted a progress report on where the construction dollars are going already, because I think the industry wants that. The only concern from the industry is the out years and they don't want this to be a "Big Dig".

SENATOR GATSAS: Thank you.

SENATOR MARTEL: Thank you, Mr. President. I also rise in support of this legislation. I also want to thank Senator Morse for bringing this out of the Finance Committee as is. Senator D'Allesandro spoke about the importance of the expansion of I-93 and also 293, which runs through the inner city, the downtown area. It's all in southern and northern part of Manchester. If it wasn't for the expansions that we have done already on this section of roads, the Manchester Airport technically would be choked with traffic getting in and off of the ramps onto Brown Avenue and Calef Road in the city heading south towards the airport. We were able to expand that area by purchasing a property and also by great planning on behalf of the airport director Kevin Dillon and his staff, to make sure the airport authority got the finances, okay, through the government to allow us to go forward with expansions. If you go to the airport today versus what it looked like, let's say five years ago, it's like you have never seen this place before. You can't even identify land markers

any more that were there in that point of time, that had been there for years, hundreds of years. That's how much it's changed. The progress went forward and it's much better today than it ever was in moving the traffic in and out of the airport. Secondly, is that the bridge on Brown Avenue, which was one of the worst bridges in the city...in the state, excuse me. It was listed on the list of the worst. It has now been repaired. Now you have a double bridge there and you have three lanes under each side of the bridge heading north and south, which again, moves the traffic coming from the manufacturing areas of around the airport and along that stretch of road, to move the traffic at a much faster rate in and out of Brown Ave and onto the highway system. So there are a lot of entities that are tied in making sure that we not only expand the highway system to the south of us, which is very much necessary, but also with any intricacies of making sure that the traffic flows within the city in a timely basis so that we can alleviate having those problems and traffic jams that we used to have. I urge you to please vote ought to pass on this bill. Thank you, Mr. President.

The question is on the motion of ought to pass.

A roll call was requested by Senator Green.

Seconded by Senator Flanders.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

SB 163-FN, establishing the New Hampshire pharmaceutical assistance program. Finance Committee. Ought to pass, Vote 7-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 163 ought to pass. Beginning in January of '06 the prescription benefit under Medicare Part D will replace New Hampshire's current Medicaid prescription drug benefit for its dual eligible population. The purpose of Senate Bill 163 is to insure a smooth transition so that people do not lose the prescription drug coverage they currently have. Senate Bill 163 will allow the Department of Health and Human Services to maintain a relationship with drug companies, in effect, creating a wrap-around program for current beneficiaries and soften the effect of the clawback tax on the state. The Finance Committee voted unanimously that this bill ought to pass and we ask for your support. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator Clegg, my understanding is that the House, in their version of the budget so far, they've instituted that Medicare Plan D costs, I believe in the section that I looked at was on page 335 which was about \$29 million. I believe that somewhere in their budget there is an additional \$16 million that shows the expense. My understanding is that, if we don't pass this legislation, we would not be able to recover the savings from those costs.

SENATOR CLEGG: You are correct. The House, as I understand it, has put the cost in of the Medicaid Part D and, if we don't pass this bill, we will not be able to collect that \$16 million or that \$29 million.

SENATOR GATSAS: What do you think the savings to the state would be if we did pass this legislation?

SENATOR CLEGG: I think if we pass this legislation, the state of New Hampshire comes out to the better by \$13 million.

SENATOR GATSAS: Thank you.

SENATOR MARTEL: Thank you, very much Mr. President. I rise in support of this legislation. I have seen many prescription drug plans that have come before my committee of Health and Human Services that really address key issues for the citizens of New Hampshire, but this one here, I think, is the best by far, especially when we talk about that clawback tax. This is a plan in the program that really would devastate, devastate the citizens of New Hampshire if we didn't step up to the plate right now and make sure that this legislation passed. The dual eligibles and the eligibles both involved here. If you just look at the format of the bill, about residency and everything else, it really covers the citizens of New Hampshire better than they have ever been covered before. We must address this before the federal government cuts off reimbursements. Now, on the other hand, is that the discounting that we are going to be getting as far as the state reimbursement or getting revenues of \$13 million, can be reapplied at some other point to enhance the program even further. So I urge my fellow Senators to please vote ought to pass on this bill as well. Thank you, Mr. President.

SENATOR LARSEN: Senator Clegg, I understand that we're going to save \$13 million from this, but I also heard that there was an additional benefit in terms of the flexibility of an open formulary allowing our senior citizens to remain on the drugs that they know or medications that they know are working for them. Is that true that there is a benefit to the recipients?

SENATOR CLEGG: There is more drugs to choose from staying on the state Medicaid system than there would be under the federal Medicare system.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Martel.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

SB 191-FN, allowing retirement system members to make additional contributions to their accounts. Finance Committee. Inexpedient to legislate, Vote 4-3. Senator Morse for the committee.

SENATOR MORSE: First, let me ask for a roll call and hope for three in a row. Thank you, Mr. President. I move Senate Bill 191 inexpedient to legislate. This legislation would allow retirement system members to make additional contributions in the retirement system. The current rate of return is set at 9 percent for both the retirement system and additional contributions. It is commendable that people are planning ahead to have a secure future upon retirement. The New Hampshire Retirement System has indicated, however, that they will require an increase from municipalities participating in the retirement system. A rate of return that cannot be sustained should not be guaranteed by going back to the communities to ask for additional funding. The Finance Committee asks for your support on the motion of inexpedient to legislate.

SENATOR ODELL: Thank you, Mr. President. I appreciate the opportunity to speak on this bill that I have sponsored. I want to thank the majority of this body who voted in favor of this bill just a couple of weeks ago and those of you who were here last year that also overturned an ITL motion on this same legislation. Again, through the process, all these numbers that get bandied about. I want to read from a letter from just January. I am going to read it slowly because it essentially covers the issues that are involved here. It is addressed to Bob Leggett the Executive Director of the New Hampshire Retirement System. "As requested, we have reviewed LSR 051013 which would allow members to make additional contributions to purchase a supplemental annuity. The supplemental annuity would be either used to offset the early retirement reduction or to provide an annuity, which when added to the regular annuity, would equal 50 percent of the average final compensation." This is from Mellon, Mellon Bank managers. "We have determined there would be no cost to the system since the member pays for the supplemental annuity." I would take you back to the predecessor of our current director, at a hearing on this same kind of legislation last year on February 3rd. "A person opposed to the added contribution program said, we are taking a shellacking on those additional monies." The executive director a few minutes later replied, "repealing this program would not take the volatility out of employer contribution rates. It may slightly lessen the volatility, but again, the long term stand point and evaluation methods we use, we see the program as being cost neutral." To Senator Morse's point, there are factors which drive the Retirement System to seek additional contributions from communities and from the state for the appropriate employees. There is no question about that. That's determined by the Board of Trustees of the Retirement System that they shall give 9 percent. That's not something you and I can argue with. That's not something we can deal with. That's the facts that are presented. But the idea that these people, men and women who are working for the state of New Hampshire, who come into service late or want to make sure that they get a maximum retirement at their own cost, at 50 percent, they're not the drivers of this cost going back to the communities. The director, at our Finance Committee meeting last week, said it is a di minimus factor. When question about the amount, he said it is "1/100 of a percent." I think he is wrong. I think its 3/100 of a percent, because you have a fund of \$4.5 billion and you have these added contributions which aggregate to \$15 million. So at the maximum, let's say that there is added cost going back to the communities, to the state of New Hampshire. For every \$10,000, according to the director, it is \$1 that is attributable to the added contribution, my figures would say that it would be a little closer to \$3. So I would take heart from the information that has been

consistently presented to us by the Retirement Department. You may hear some other factors later on about the 9 percent. As I said, that's up to the Board of Trustees to adjust that. We are dealing with the facts, and what we are trying to do is say to people in this legislation that, if you join the Retirement System effective January 1, 2005 you should have the same opportunity to make a contribution, an added contribution to your retirement plan to purchase annuity, just like those who are hired over the past five years and before, who joined the program. I would tell you that this is cost neutral according to the department, in terms of the added contribution and for these charges that will be going back to the communities. The added contribution at 3/100 of a percent maximum, is not a driver of those costs. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator Odell, I certainly hear what you're saying, but can you tell me of another company that somebody that was in the system, retired before they met their requirements of retirement, had their funds in the system, and that are receiving 9 percent? Most companies, wouldn't you agree, tell you that you must take your money out of that system?

SENATOR ODELL: I think it's two questions about taking the money out of the system, I know that at Odell/Sims in our retirement plan, the money can stay in there. That would be the example that I would be most familiar with. On the 9 percent, that again is a factor that has been determined by the Board of Trustees of the Retirement System.

SENATOR GATSAS: So what your saying is it is kind of like a sharing of risk when you're saying that that 1/100 of 1 percent goes back to the communities?

SENATOR ODELL: That would be the maximum amount that could be attributed to having an added contribution program.

SENATOR GATSAS: But it's a risk sharing?

SENATOR ODELL: I would have to think through the term on that, but what you have is the added contribution program, which the actuaries advise on, as I just indicated. The \$15 million that's in the added contribution program is part of \$4.5 billion. It is a pooled fund.

SENATOR GATSAS: Thank you.

SENATOR ODELL: Yes.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the motion. First, I would like to say that we had a very heated, constructive discussion in the Finance Committee. I think the chairman brought in people from the Retirement Board. They answered all of our questions. We posed those questions to them. I think we did a very good job of looking at this thing in depth. What we found, as articulated by Senator Odell, is there isn't a problem. We also found that this 9.5 percent, which is the bugaboo, can be changed by the trustees. The trustees determine that percentage. Now we also heard that over the last decade, the rate of return was 10 percent. We also heard in the last year the rate of return was 14.9 percent. We did get some information this morning. Senator Flanders said we could share this. The rate of return by the actuaries as they move out is 8 percent. Well I think that is a bell weather that says to the trustees, you have to deal with that as you move forward and you have to reduce the percentage increase. It is good public policy to allow people to buy in. Older people come into the system and they want to substantially contribute to the system. Why not? We want

those people in the system. We want that expertise in the state of New Hampshire. There were many years, many years, when the state of New Hampshire did not contribute its share to the Retirement System. Remember, this whole Retirement System was constructed by the state and the great impetus to get people to join this system was the fact that the state would contribute. That was the drawing power of this system. Secondly, we have found that communities throughout this state recognize the fact that this system is a better way to plan for retirement. We have passed legislation in these last couple of sessions that have allowed every municipality to get into the system. So, there is great respect for the system, for the solidarity of the system and for the actuarial studies that have come out. I believe we made a poor policy decision when we decided to curtail the system in the last session. This is an attempt to correct that situation. It makes good sense to correct that situation. As we move forward, we appoint these trustees, and members of our legislature are members of that board of trustees. If they see a problem with the actuarials, they can make a decision to change that rate of return. The system is solid. The system has proved beneficial to those people who belong to it. It is good public policy to allow for these contributions. I realize it's a debatable issue. I recognize that. You'll have the other side talk about it. I respectfully request that you listen to both sides of the issue and then you make a decision based on what you perceive is in the best of the people you represent. Those people who are in this system, who have confidence in this system and who want to make additional contributions because of that confidence. And recognize the fact that if we said it stops at a certain point, what you are going to do is you're going to force people to put more in before the window closes. We closed the window. And what did we see? We saw numerous people doing what they had to do because of the fear that it was all over. This restores that confidence. I think it's good public policy. It's good legislation. We overturned an inexpedient on the floor before it went to Finance. I hope you have the confidence in yourselves when we voted for it before, we will revote for it again. Thank you, Mr. President.

SENATOR GREEN: Thank you. Senator, I'm looking at the fiscal note on this bill. Is the fiscal note 1013, is that the one that is current? I just want to make sure that I have the most recent fiscal note.

SENATOR MORSE: I believe it is, Senator.

SENATOR GREEN: Okay. As I read this, I don't see anything here that creates any financial burden on the Retirement System. So I guess I am at the point of what's the fiscal impact that is driving this inexpedient to legislate?

SENATOR MORSE: If you'll let me explain. I was going to speak to this, but I will speak to it now because it addresses your question.

SENATOR GREEN: Thank you.

SENATOR MORSE: One of the things that this board is faced with that looks over the Retirement System is they have two ways of producing the 9 percent that they are guaranteeing. One way is in the stock market. The other way, which I believe the public should have a say in, and they don't. That is, they can go to the public and raise the balance that is needed to guarantee 9 percent. What they have chosen to do this coming year is to go to our towns for a sum of some \$40 million and to go to the state for a sum of some \$19 million to keep this same guarantee in place. Now where do the people get to speak? That's my concern in this.

The public that we represent is guaranteeing that we are going to produce 9 percent for this group of people and they don't even know it. They are being here with some \$60 million this year to guarantee 9 percent. That's the part that I don't think is fair. I think there are some things in the Retirement System that need to be fixed. One of my first votes up here was on COLAs and it was a tough, tough decision. But everything we heard is we are not going to be able to do any better in the next three years with COLAs. So I think there is a lot to fix in this system and I don't think we should add even 3/10 of a percent to this system until we fix what we have to fix. Thank you.

SENATOR BOYCE: Senator Morse, we have heard that this is a small percentage, 3/10 of a percent I guess. But we have also heard that thousands of state employees, when they heard this program was going to end, jumped in and said we want to invest in this. We want to put some money in it. So we're looking at a program that is going to increase because what we did last year. And we're also looking at a program that is guaranteeing a rate of return for people to put their own money into and it's being guaranteed by, in effect, the taxpayers. Isn't that what this really comes down to? We've got people that are going to be putting money into a system, they are being guaranteed they will get a good, a very good rate of return, 9 percent rate of return, and the guarantee on that is being guaranteed by the taxpayers of the towns, by subsidizing the teachers' pay and the municipal employees' pay, on the portion that is paid by the municipalities into the fund, and by the state. That's where the guarantee is. If the investment doesn't...if the board is not able to return better than 9 percent, which sometimes they're able to and sometimes they're not. If they're not able to return more than 9 percent on those investments, that guarantee then becomes a tax upon the people. Isn't that really the way this works?

SENATOR MORSE: Yes. And the number that you are looking at is we forced 13,000 people to apply. Even if some 6,000 qualify, they qualify up to putting in \$40,000 into the system. There isn't an investment advisor out there that wouldn't tell people to borrow money at 5 percent on a guaranteed investment of 9 percent. So the reality is you could see some 6,000 people adding \$40,000 to this. We are guaranteeing it as citizens of the state.

SENATOR FLANDERS: Thank you, Mr. President. As you recall, I did not vote on this last time because I felt there was a possibility of a conflict and legal counsel has told me that, although I am a member of the Retirement Board, I do not have a conflict because I do not receive retirement or have any benefit in the Retirement Board. I spent some time on this last week to get some information that's relatively new. I am not going to throw percentages around that Senator Odell did, but I am told that we, as trustees, have received this report which is the projected income for the next ten years. Those of us that are in the stock market are not going to be very happy with what I have to say, but the predication for the next ten years is our income in the Retirement Board is going to be between 8.24 and 8.93 percent. So, number one, we're guaranteeing these people more money than we are going to take in. The Special Account is in trouble. You have heard it, and you have heard it, and you have heard it, and you are going to continue to hear it, because the Special Account is in trouble. One of the hardest things that I did, as Senator Morse referred to, Senator Eaton couldn't be here one day and I sat in on the vote for the COLA. I want you to think about this. I sat there

and I voted for a 1 percent raise and a 1.5 percent raise. Then I got to thinking, a long time afterwards, we are paying people in the system 9 percent. And we have a retired police officer sitting out there that was in his 70's, 75 years old, and we are giving him a 1 percent increase. This is not fair. I don't care whether it is right. I don't care what you think about it. It is just plain not fair to go to our fund and pay a guaranteed 9 percent to somebody who is working. Now any industry that I know of would indeed say yes, you can have your retirement funds, but if you're going to put in other funds, you go to a 401K. That's the company that I retired from and I think most are the same. So enough on that. But this tells me that we're going to pay out more than we're going to take in. I don't think that is right. For your information, I also got a list of all the other states that do the same type of program as we do. We indeed are the highest at 9 percent and the lowest is about 2.5 percent. The average of all the states that do this is 4.5 percent. Now you are going to hear the next question to be, well why don't you change it? I don't know if the votes are there on the board to change it. I have no idea what the Board of Trustees will do. But I can tell you, from what I read right here, that the next ten years, the COLA increases are going to be around 1 and 1.5 percent. I don't think that we should be giving out 9 percent when we have this to look forward to for ten years. Thank you.

SENATOR GOTTESMAN: Senator Flanders, isn't it true that the statute that sets up this fund gives the powers to the trustees to make changes in the rate of interest if they think it is expedient to do so?

SENATOR FLANDERS: I am sorry?

SENATOR GOTTESMAN: You understand that the trustees of this fund have the right to change the interest that is paid if they think it's in appropriate?. Are you aware of that?

SENATOR FLANDERS: Yes, Senator, I believe that I just said that that would be the next question and I didn't know what they would do.

SENATOR GOTTESMAN: Okay. Thank you.

SENATOR CLEGG: Senator Flanders, can you tell me who sits on the board of trustees? Are they all people that would be personally affected by the decisions? Are they all members of the Retirement System?

SENATOR FLANDERS: You have two firemen and there are two policemen and two teachers, and two from the public and two from the Legislature. So they are sitting on the board deciding their own interest rate for this fund.

SENATOR CLEGG: So, would that mean that only the two legislators aren't personally affected by the decisions they make while they sit on that board?

SENATOR FLANDERS: The two from the public would not be and we would not be. That's right.

SENATOR CLEGG: Thank you.

SENATOR BARNES: Senator Flanders, I just heard Senator Clegg's question about there is only two of you on the board that don't have an interest in this.

SENATOR FLANDERS: Four.

SENATOR BARNES: Four. I am sorry. It is four. It is kind of interesting that Senator Clegg brings that up because, as we sit here in this

chamber, I don't know how many folks in this chamber, and I am not going to ask, are on retirement will be affected, but would you believe I think over in the House there is a whole mess of them, when I sat over there, and they used to vote on what's best for them, too. I have a problem with that, but it is something that has been going on for years, would you believe? I don't know how you take care of that.

SENATOR FLANDERS: Would you believe, in reply to that? If you look at it, and you have policemen who have their friends who've got this fund in there, and you've got firemen who have that fund in there, and you've got school teachers that have that fund in there, would you believe they probably would vote not to reduce the 9 percent? Would you believe?

SENATOR BARNES: If you say it, I believe it.

The question is on the motion of inexpedient to legislate.

A division vote was requested.

Yeas: 13 - Nays: 11

Committee report of inexpedient to legislate is adopted.

SB 210-FN, relative to a declaratory judgment to adjudicate constitutional nexus. Finance Committee. Ought to pass, Vote 7-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 210 ought to pass and, whatever I said two weeks ago was good enough, so I will leave it at that. Please join me in voting ought to pass. Thank you.

Adopted.

Ordered to third reading.

SB 30, establishing the Collaborative Practice for Emergency Contraception Act. Health and Human Services Committee. Ought to pass, Vote 3-2. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. The Health and Human Services Committee recommends Senate Bill 30 ought to pass. Senate Bill 30 will allow voluntarily participating and trained pharmacists to dispense emergency contraception known as Plan B. Testimony received by the committee clarified that Plan B is not an abortive drug. What Plan B is, as demonstrated in other states, is an extremely effective means of reducing the number of unwanted pregnancies and the number of abortions. Both declined dramatically in states where Plan B is available through pharmacists. Nationwide, studies show emergency contraception has the promise to reduce 50 percent of abortions in this country each year. All of us would likely agree these are desirable policy goals. Those goals are far more likely to be achieved if emergency contraception is available through pharmacists, both because it is often needed on the weekend, and because access to pharmacy's is far easier for uninsured women and for victims of domestic violence. Easier access is critical since the pill's effectiveness is 95 percent within the first 24 hours and then declines rapidly. Several of the committee members who voted against the ought to pass motion expressed particular concern about the availability of this program to young adolescents. The majority recognizes and shares these members' sincere concerns for the wellbeing of children. Plan B has not been shown to have adverse effects on its youngest users. While adolescents carrying a baby to term has been shown to have adverse effects. A young girl of 13 or 14 who has been the victim

of sexual assault may still be a child, but has unfortunately been forced to confront some very real adult issues. She has the opportunity to access emergency contraception if she can get to a hospital emergency room or to a clinic on weekdays no matter her age. A pharmacist trained by the Board of Pharmacy, in cooperation with the Medical Society, presents a viable substitute in a situation of extreme urgency to a traumatized teenager on the weekend. Those testifying in support of Senate Bill 30 included the New Hampshire Medical Society, Rape and Domestic Violence Crisis Program, the New Hampshire Pharmacy Association, New Hampshire Independent Pharmacists Association, YMCA Crisis Services, New Hampshire Women's Lobby as well as pro choice organizations. The committee asks your support of the ought to pass motion.

SENATOR D'ALLESANDRO: TAPE CHANGE this bill in the Senate in our last cycle. We passed it by a vote of 14-9. Let me tell you why this is an important piece of legislation. It is an important piece of legislation because it manifests good public policy, and we are all here to promote good public policy. There are three very basic reasons why this should pass. Improving access to health care. We are all in favor of improving access to health care. Reducing unintended pregnancy and abortion. Who here is not in favor of reducing abortion? We all say it. This is a chance for us to prove it. Controlling the cost of health care by supporting efficient models of care. Again, we are all here in favor of that. What we have proposed is a program that is supervised, that you voluntarily become a part of. The Board of Pharmacy works together with the medical community, with pharmacists, so that a program is put in place that is accountable and it does exactly what we want. It improves access to health care, reduces unintended pregnancy and abortion, and controls the cost of health care. The American Medical Association, The American College of Obstetrics and Gynecology, support programs like this. In our neighboring state of Maine, this legislation was passed in the last cycle. It's good public policy. It is something that we believe in. I have two daughters. I have three granddaughters. I am a Roman Catholic. I believe it is good policy for my family, and it's good for the families of others, and that is what we're here to construct. Good public policy. We have controls, we have a mission, and we have a way to get it accomplished. We did it before. This piece of legislation passed the House. This piece of legislation passed the Senate. This piece of legislation was vetoed by the Governor. We weren't in a position to override. We are assured that the Governor will sign this piece of legislation as it is. I respectfully ask for your support. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you, Mr. President. I think, before we jump off and vote on this bill there are a few things that probably need to be brought to light. Now this bill will put the responsibility on the pharmacists of this state. No pharmacist came forward in committee supporting this bill. Some are refusing, and this is on a national basis, some people somewhere, in these states, are refusing upon personal, moral and religious belief, and we need to take this into consideration. We're going to be forcing pharmacists to do this against some of their moral obligations. This bill requires that pharmacists complete emergency contraceptive drug therapy education and training. So now we will have pharmacists counseling teens and married women. How much will this add to the cost of drug that is so desperately needed? Some estimate that it would more than double the cost. Additionally, the *Washington Post* article recently reported that there are cases involving pharmacists

who have been fired for refusing to fill these contraceptive prescriptions. In Canada where it is legal now, there are over the counter sales and the *Canadian Medical Association Journal* shows that the usage of this particular drug has doubled. In the FDA news, the *Federal Drug Administration News* of 5/7/04, the FDA's letter to the sponsor notes that "the application does not provide adequate data to support the use of Plan B by young adolescent women without the intervention of a physician." The letter also points out that "The sponsors March 11th amendment of last year, to its application to allow the marketing Plan B by prescription drugs to women under 16 years of age was not complete. As a result, the agency was unable to do a complete review on the amendment on this review cycle." In the *Journal of American Medical Association*, on June 16, 2004 Steven Galson, Medical Doctor, acting director of the Federal Drug Administration, set up a drug eval research. Stated the company had presented insufficient data on the drug safety in girls younger than 16 years of age. He also wrote, as an amendment application from Barr to make available over the counter to only adolescent girls. Additionally, from the United States Department of Health and Human Services in a letter of response to this, "The purpose for over the counter status for both Plan B for both adults and children were based primarily on actual youth study and 585 subjects. Only 29 of the 585 subjects enrolled in the study were 14-16 years of age, and none under the age of 14. Based on the review of the data, we have concluded that you have not provided adequate data to support a conclusion that Plan B can be used safely by young adolescent women for an emergency contraception without professional supervision of a practitioner licensed by the law to administrate the drug." Then it goes on further to say "Before this application can be approved, you will have to provide data demonstrating that Plan B can be used safely by women under the age of 16 without the professional supervision of a practitioner licensed by law to administrate the drug." On January 21 of this year, 2005, the Federal Drug Administration put off its decision on whether to allow over the counter availability for Plan B emergency contraceptives. I would suggest to this body, this bill is premature and it proposes a health risk to young teens and young women. Obviously, I would like to overturn this bill for ITL. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Senator Letourneau, you said, I believe, that the pharmacists did not testify. Are you aware that, not only did the New Hampshire Board of Pharmacy come in support of this bill, but the New Hampshire Independent Pharmacists Association testified in favor of this bill?

SENATOR LETOURNEAU: I am sorry, Senator D'Allesandro. I don't recall that. If that is the case I will believe you. I would also point out that, in speaking to the Pharmacy Board of New Hampshire, they told me that, if this was approved, that the whole class of these drugs would be over the counter sales. In other words, not just the Plan B, but the regular prescription drugs that the women take on a daily basis, would be also approved for over the counter. He told me that there were pharmacists calling his Board that were concerned that they would be put into that position.

SENATOR D'ALLESANDRO: Senator, do you realize that this is a voluntary program? That only pharmacists who volunteer will be part of the program?

SENATOR LETOURNEAU: That may be, but the Federal Drug Administration still hasn't approved for over the counter sales.

SENATOR D'ALLESANDRO: Are you aware that the Federal Drug Administration last year, voted 23-4 to recommend allowing the drug to be available over the counter on drug store shelves without any pharmacists or medical provider involvement?

SENATOR LETOURNEAU: Yes, I am and they overturned that.

SENATOR D'ALLESANDRO: So, you are aware of the fact that they voted 23-4?

SENATOR LETOURNEAU: Twenty-three to four in favor of over the counter sales. But, in a letter dated May 6th, the acting director of the FDA Center for Drug Eval...I already read this, stated that the company had presented insufficient data and they have held back that approval.

SENATOR D'ALLESANDRO: You mentioned an article in a newspaper. I would like to, maybe you have read this question, have you read this, an article in the *Washington Post* dated January 5, 2005 which said "providing women with easy access to emergency contraceptive Plan B did not lead them to engage in more risky sexual behavior, a study of more than 2,000 women has concluded." Were you aware of that?

SENATOR LETOURNEAU: Yes.

SENATOR D'ALLESANDRO: Thank you, Mr. President.

SENATOR LETOURNEAU: The data doesn't support that in Canada where it is legal. They have doubled in the sale of that product.

SENATOR D'ALLESANDRO: Is it the policy of this board to adopt Canadian legislation?

SENATOR LETOURNEAU: No. No. I'm just using their data as evidence that it does double the use of the product, particularly where it is risky. We know, and there are studies that show, that women who have been on birth control for a number of years, for a long extended period of time, that they develop problems later in life, ovarian cancer and other problems. This particular Plan B drug is a mega dose of that product. We are suggesting through this legislation that it be handed over the counter sales to teenagers when we don't know what that drug will do to teenagers and their developing bodies.

SENATOR D'ALLESANDRO: Thank you, Mr. President.

SENATOR BRAGDON: Thank you, Mr. President. Senator Estabrook, I don't know a lot about the medical area, but I assume when drugs are available by prescription only it's because they are either very powerful or have side effects. Are there other drugs that New Hampshire citizens are allowed to go to their pharmacy and get that are prescription drugs that they can obtain without a prescription?

SENATOR ESTABROOK: I am not aware of any. I am not aware of any that have circumstances surrounding them such as this unique case. No.

SENATOR BRAGDON: Thank you.

SENATOR FULLER CLARK: Senator D'Allesandro, is it not true that emergency contraception has been being used in other parts of the world since the 1970s, and that we have no evidence, with no age limitations, that we have no evidence that it has had a negative health impact on adolescents?

SENATOR D'ALLESANDRO: That's correct.

SENATOR FULLER CLARK: Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. Enough is enough, Mr. President and members of this Senate. I, too, am a Roman Catholic. I have strict ethic beliefs and have never imposed on any one member of this body or my committee. I am a Roman Catholic and this is absolutely wrong that we will start giving and prescribing, not prescribing, but allowing pharmacists to give these pills over the counter to children as well as young teenagers. I have a spouse with that belief. Okay? I have grown up with that belief, and I believe that teaching is absolutely strong in my heart and is right. To answer Senator Fuller Clark's question to Senator D'Allesandro a couple of minutes ago with regard to the use of contraceptives in Africa since the 1970s, there is no record probably of any damage that has been done to the population, but why don't we think about how many people have been killed because of it? How many children have died with the use of this? If we allow this to become law, this will be passing down that belief from the elder of the family down to the young lady who is in a family growing up, and if there are any younger ladies in the family who are younger that see this, it will have an impression upon them and more than likely will probably pass through the same cycle because it was okay for the elder sister, we can do it for you, too, as well. I hope that is not the case, but it's a probability. I visited the clinic at the YWCA, the old YWCA in Manchester, six months ago just to investigate. Just what that they had there for a clinic for young ladies. They do some good things there. But there was two things that I was looking for. I was looking for information about abstinence. There was none. But I saw plenty of data regarding birth control as well as abortion and availability. I saw some examination tables there. None of these actions have taken place there, but they certainly espouse to everything but abstinence. I don't even think many of the people who are sent there may go there and their children may go there, even know that this is being offered to them. They may be talking to their children about abstinence, but then someone else is trying to convince them that abstinence is not available as an option and the other things are. When we talked about this bill last year, I brought up the fact of the liability that pharmacists could face. Pharmacists could be placed into a position of issuing this medication. And I understand it is voluntarily. It is voluntary. But how long do you think it will be before, let's say, the pharmacists in your towns, if you have any independent pharmacists there, become black balled by organizations who want them to give this medicine over the counter, and will do anything to make sure that it is happens? It won't take long. This is not right. The protection of the local pharmacists, a dying breed, is one of the most important things that I face in life and trying to help them in health care, which I have been working on for the last 20 years. These pharmacist are not in favor of this and they are afraid to death about it, even though some people noted in their agencies, such as the Independent Pharmacist Association, and the Pharmacy Board may believe it is good. I urge my fellow Senators to look at this and to think about it hard. I know it is a very difficult decision to make. I will honestly tell you that I am right on the edge on this. Right on the edge on this question. My daughter is 19 years old. My daughter has abstained. I can't be prouder and stand here and be a father to let you know that. And again, when I say I am on the edge, is that my ethical behavior tells me yes, then it tells me no

against this bill. Yes to the ITL, then on the other hand, I can understand people's emotions and people's beliefs in this. So, Mr. President, I ask my fellow Senators to think hard again on this and please, I know it is a conscience vote, accomplish what we need to accomplish and not let pharmacists be the scapegoats to present these pills to children. I urge you. Thank you very much.

SENATOR KENNEY: Mr. President, I would just like to offer a floor amendment, if possible, floor amendment 0979.

Recess.

Out of recess.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

March 30, 2005

2005-0979s

01/09

Floor Amendment to SB 30

Amend RSA 318:47-e as inserted by section 3 of the bill by inserting after paragraph VI the following new paragraph:

VII. Emergency contraception drug therapy as authorized under this section shall only be available to women 18 years of age or older.

2005-0979s

AMENDED ANALYSIS

This bill establishes the Collaborative Practice for Emergency Contraception Act. Under this bill, a pharmacist may initiate emergency contraception drug therapy to women 18 years of age or older in accordance with procedures developed by the New Hampshire pharmacy board and a physician or other authorized prescriber who is acting within his or her scope of practice.

SENATOR KENNEY: Mr. President, I rise to offer a floor amendment. The amendment that I have introduced is really to look at an age requirement to receive this emergency contraception drug. I offer it because, as you know, when we had this debate, the folks that were in the Senate last time it passed this body, fairly substantially 14-9 and it passed the House. It was then vetoed by the Governor. But, out of this body, we had passed a parental notification that had an age limit. And so when I looked at the entirety of this, I said, I am going to speak today as a parent. And I am not going to speak as a state Senator, and I am not going to speak about an interest group, but I am going to speak to you as a parent. If I have a daughter, and who knows, I am having a child in June. It could be a daughter or a son, I am not sure at this point. We know, but we are not going to tell you. But, if I have a daughter or if I had a daughter, I would want to make sure when it comes to emergency contraception that there be an age requirement of 18. Senate D'Allesandro talked about good public policy, and there were three criteria for that. Access to health care. Unintended pregnancies. We want to reduce that. Control the cost of health care. But I think the better public policy would be to have an age requirement on receiving this type of emergency contraception and you would still meet all those three items that Senator D'Allesandro spoke about. I am concerned about a young woman receiving an increased dosage with this type of drug. I am concerned about the maturity level of a young woman. I am concerned about the pharmacists

themselves who are going to opt out of giving this type of drug. Maybe with an age requirement, they actually might offer it. But the concern that I have again, is that I believe that we are setting up our young women in this state, if we allow this to go out across the counter without any checks and balances. That's the reason primarily, why I am offering this amendment. We know today that, if a woman is impregnated, her choice or not, that she can go to an emergency center or hospital and receive this drug. And that is our current, present day policy. But, if we are going to open this thing up, and apparently we have because this body and the body over in the House has passed it last time around, we have a democratic governor who is willing to support this, then I need to speak as a parent and say that that is wrong to have a *carte blanche* open policy to have this drug over the counter for young women. Last year the *Union Leader*, Shawne Wickham, on a Sunday wrote an excellent article about this whole debate, and, in that debate, it really came across that the pharmacists were scared to offer this and many of them weren't going to offer this emergency drug. Secondly, there was a concern about the age. I think that there were many Senators last time around who were concerned about the age as well, and they made mention of that on the floor. This was not offered last time around. It is being offered this time as an amendment of an 18 year old requirement. I offer it as a parent and I think it's probably the better public policy, but for face value I would vote against this bill. Thank you, Mr. President.

SENATOR BOYCE: I would like to speak and I will, since the amendment simply adds to the bill, I will speak to the bill itself and the amendment itself. The first thing that I want to mention is that we heard about this Plan B. Plan B, I understand, is a trade name of one particular pill that is one of these contraceptive products; however, this bill does not say that this is for Plan B. This is for any of the drugs that are in that category. So this would not strictly, whatever Plan B is or isn't, this doesn't say that only Plan B would be available. We need to think about what we're actually doing here. We're allowing a bill (sic) that currently is available under prescription, which means a doctor has to at least think about who it is that's going to get this drug. We're talking about that pill, that drug, being made available without a doctor's oversight. No doctor would be required. No doctor visit, no doctor relationship. Now I think some of the other situations where this situation, this procedure might be helpful, I think. I have two grandsons. They come home from school with all sorts of things. Every once in a while they come home with strep throat. Now I seem to be particularly susceptible to strep throat and whenever one of them is diagnosed with a strep throat, I go to my doctor and get a strep test and I have strep throat. It's just automatic. They get it, I get it. Now, it would be very helpful to me if, when one of them has come down with strep, that I could simply go to the pharmacist and say give me streptomycin or whatever the current latest drug of the day for strep throat is, and I could simply get it and not have to go to my doctor, not have to see my doctor. But of course, we don't want to do that. That is not in this bill. That requires a prescription by the doctor or at least my nurse practitioner. For a while I didn't have a doctor, I had a nurse practitioner. But what about other drugs that might be helpful to be dispensed in this way? Now since we are talking about people who, for one reason or another have had sex, unprotected sex, because that is the only reason you would need this bill. If you had protected sex, you wouldn't think you need it because you were protected. You'd used the condom, you used the whatever other method. It is ironic that we always

have young female pages the days that we debate these. It is uncomfortable, but we've got to talk about it. So somebody has unprotected sex. They know that they have a need for this drug. So shouldn't they also, at the same pharmacist's counter, be able to get drugs to treat Chlamydia, gonorrhea, syphilis, HIV? Shouldn't those all be available under the same terms, because we know that, if you're having unprotected sex, you are also at risk, not just for pregnancy, pregnancy is one of the things that you are at risk for if you have unprotected sex. But if you have unprotected sex, you are at risk for HIV, gonorrhea, syphilis, a whole range of sexually transmitted diseases. So shouldn't we put those drugs in the same category? Shouldn't the pharmacists be able to do the same thing? Oh, you had sex last night, here's your pills. When this came up last year, I spoke about what else it's promoting. It's promoting the *Sex in the City* lifestyle. We've seen the TV show. These women are living in New York City and it seems like every night they have somebody, usually a different person, that they go to bed with. Is that what we want to promote for the young women in our society, young women and men? This is saying there is no consequence for sex. There is always a consequence for sex. One of the consequences is conception. One of the consequences is disease. We don't want to promote that. This bill is promoting that. Now this talks about a pamphlet that would be put out for the pharmacists. It would include indications for use of the drug, the appropriate method of using the drug, information about the importance of follow up health care, and health care referral information. But I don't see in here anything where it talks about the implications of what you have already done. Should you be tested for HIV? Should you be tested for syphilis or gonorrhea? Should you be treated for these diseases that you may have picked up? Now the aspect of the age, the amendment. I am in favor of amending this bill if it's going to pass, to make it that it is only available over 18. We don't let kids buy cigarettes under 18. We don't let them buy beer under 21. There are lots of things that we don't let kids buy because we know that they are not mature enough. I think that we just decided, not too long ago, they're not mature enough to understand that killing somebody is murder. So we can't execute them. I don't think we should sell them drugs over the counter; that they should have a little maturity before they buy them. So I am in favor of the amendment, but I am against the bill, even as amended. Thank you.

SENATOR BURLING: Thank you, Mr. President. So much has been said, it's a little hard to know quite where to start. I've been part of this political discussion for a long time, and I am here today to say that I stand in support of the passage of the bill and in opposition to the passage of the amendment. I come to this discussion with two principles in mind. First, that as Representatives and Senators in the government of the state of New Hampshire, that we do believe in the motto of our state. I also believe in the notion of respecting the women of this state, and respecting their judgments and their individuality. And you know something? Even their reality. I am male if that is not obvious. I can assure you of it. I don't live the life, Senator Boyce, that you were prepared to impute to some of our female citizens. I have fought on the issue of reproductive choice since 1988. I believe this bill should pass because, for the first time, there is a reason for conservative Republicans and liberal Democrats and Libertarian whatever's, to come together in the effort to reduce the number of abortions. And here is a proposal that will actually let us do it. Hosanna. I am here as a parent, too. I am a parent of a boy and I am very proud of it. I wish you all the joys of parenthood and

only a few of the miseries. But I do stand here to say that, as to the young women of the state of New Hampshire, I want to know that they'll have the chance to deal with a situation that may confront them, either by their choice or against their choice, in a way that is responsible and legal and safe. I, frankly, would be more comforted by the notion that a young woman, a child of one of my dear friends, if she found herself to have been engaged in sexual activity, could find a way to go to a pharmacist, who had volunteered to advise her, provide her with guidance, and give her a way to avoid the alternative, which would be an abortion later on. But you know something? My choice as a male, frankly, is pretty nearly irrelevant. My choice as a legislator is to do those things that move public policy towards a goal that I think we ought to be trying to achieve. A reduction in the number of abortions is a good goal. Passage of this legislation, without the amendment, will help us do it. Finally, Mr. President, I do want to say two things. I have heard a lot of talk about pharmacists. This isn't about pharmacists. The only pharmacists who are going to be engaged by the activity of this bill are pharmacists who volunteer their efforts and time. They take on a responsibility. I am not willing to set aside the rights of the women of this state because of the potential liability of a group of volunteer pharmacists. Finally, I have heard repeated reference to the concept of "over the counter". This isn't over the counter. We are not talking over the counter. We are talking about distribution of a drug, under the instruction and advice of a pharmacist who has not only volunteered to do that, but is trained to do it. So please let us at least do each other the honor of being clear in our terminology. There is no over the counter going on here. What there is, is a responsible empowerment of the women of this state to deal responsibly with a situation that may confront them. I want to say also to all of you, as heated as this is, I think this is the first time we have seen a way to come together, not drive apart. And in coming together, reduce the number of abortions and increase the safety of our fellow citizens who happen to be women. I hope you will vote for this bill and against the amendment.

SENATOR BARNES: Thank you, Mr. President. Senator Burling, you talked about pharmacists. Now we do have in the state of New Hampshire, a few pharmacies that are open 24 hours. So I would assume a 24-hour operation might have three pharmacists involved. I am sure the fellow is not there 24 hours a day. So there must be three, maybe four or five pharmacists in this particular pharmacy. Let's say there is one in your home town. So what happens if two of them agree and the other three don't? How do you solve that confusion? They put a sign in the window, "the first shift we do it, the second shift we don't or how's that going to work if you have a split in the pharmacy with the pharmacists that are dispensing?"

SENATOR BURLING: Pardon my turning my back Senator, but I have been instructed to speak to the microphone. No, I am fine right here. Thank you. First of all, where I come from, the pharmacists are likely to be women, so I'm not going to be confronted with the problem of fellows. Second, I'm absolutely convinced that volunteer pharmacists can figure out how to structure the needs of their own community with their particular personal needs in terms of shift coverage. You know, I think they do that already. I don't see that as a realistic problem. I think this is a bill which is so traditional as a New Hampshire solution because it allows individuals to take responsibility and volunteers to help serve people as they take responsibility. That is why I think it's a great bill.

SENATOR BOYCE: Senator Kenney, my question is, you having been on the committee that heard this bill in committee, and are a little more familiar with it. Is there any protection in this bill for a pharmacists who, let's say, works for a chain drugstore, who on his own moral principles, decides that he or she, doesn't want to prescribe this product over the counter? Is there any protection in there for that pharmacist when his employer says, our company policy is that we are going to offer this drug over the counter and you have to take this course and you have to dispense this drug? Is there any protection for that pharmacists or is he going to be fired?

SENATOR KENNEY: That's an excellent question, Senator Boyce, whether or not that individual, based off of their moral principles, believe that they should not administer this drug to a young person. I have to believe that, if they are fired, they might have some type of recourse that maybe go to the Labor Commissioner to have that overturned. But, I have to believe, again, not only are we setting up our young women when it comes to allowing this through this bill to...this drug to be given out carte blanche, that we also might be setting up our pharmacists who don't have the current beliefs that they should go ahead and prescribe this type of drug. I would also say that Senator Burling mentioned that maybe pharmacists would...or companies would find arrangements to put, maybe have someone on call who has a certain belief system to prescribe this drug, replace the other person who feels uncomfortable in doing it. That might be a solution. But it raises a big issue and it's not one that was answered in the testimony.

SENATOR BOYCE: Thank you.

SENATOR FLANDERS: Very briefly, Mr. President. If I read this bill correctly, I would ask you to read lines 9, 10, 11 and 12. I believe, if I read that correctly, that the pharmacists has to be in connection with a doctor. I have heard an awful lot of things about the pharmacists out by himself. It says he has to be working with an authorized prescriber. I presume that is a doctor. So there is a doctor. 1) the pharmacist volunteers. 2) he goes to these trainings. 3) he is working in front of a doctor. I've heard...I think we went a little bit overboard when we talked about someone going in week after week. I sat down with my pharmacist who is in a small town. My pharmacist tells me, it is not going to be every week because then they would have to be referred to a doctor. If they see certain things they are going to be referred to a doctor. This is not going to be just in and out every weekend or whatever. I've sat down with my doctor and this is the same testimony that I had a year ago and it is going to be the same testimony today. I sat down with my doctor, whose wife is a doctor, she came in and we discussed it. There is no evidence that these two doctors told me that there is any harm to a young girl for taking this bill one morning. That is what this bill does. It doesn't prescribe it for the rest of their life. It doesn't prescribe it for the week. It prescribes one pill for one morning. So let's get this all back in where it was. We went way out, now let's get back. In closing, I just feel that my children are grown, but I still think that we ought to have equal rights, as I said a year ago, young boys can go get what they have to have, I think young girls should have equal rights. I ask you to vote down the amendment and vote for the bill. Thank you.

SENATOR BRAGDON: Thank you, Mr. President. I reluctantly rise in opposition to this bill. Reluctantly because I think the goals are laudable. In fact, the arguments made by those in favor of these bills, are in

some ways more relevant and more cogent than those made against it. As many of you know, I was a math teacher. I was very happy to be a math teacher because people ask you easy questions. Two plus two equals four. If I was a science teacher I would have to answer when does life begin? How old is the earth? When you teach at a religious school those are questions that are debated often, but in a math class two plus two equals four and your hardest job is probably explaining why negative one can have a square root. On this particular bill, the thing that concerns me probably is the issue of the pharmacist versus the doctor. As was indicated by my prior question, there are no other prescription drugs for which pharmacists are allowed to dispense them without a doctor giving the okay. In relation to Senator Flanders' comments about the bill lines 9, 10 and 11 that indicate the goals or that the prescriber be working with the pharmacist. But that is in developing some protocols. On any individual case, there will not be a doctor involved in dispensing what is a prescription medicine. I spoke with a pharmacist today. He said there is a reason these drugs are prescription. This isn't just like aspirin. There are potential side effects. This is something that needs a medical review at this time. Now I do understand that there are some efforts underway to take this type of drug off of the prescription status and make it over the counter and then the point becomes moot. But my concern at this point and the reason why I will be voting against this bill is it allows a pharmacist to dispense a drug that requires, in all of the cases, the approval of a doctor. And, for no other prescription drug, do we do this. I think that is bad public policy. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you. Senator Bragdon, I would like to ask you if you're aware of any other medication that must be taken within 24 hours to be effective?

SENATOR BRAGDON: I do not know whether there are or are not any.

SENATOR ESTABROOK: Thank you.

SENATOR LARSEN: Thank you, Mr. President. I was tempted to ask the former math teacher when is the one plus one formula add up to three? I would say that this is an instance when one plus one adds up to three. The amendment is what's before us. The amendment supposes that only women 18 years of age and older might need this in an emergency. I'd like to say we in a world where that's true. But, as many of us know who are parents, and I, too, am the mother of a daughter. I have had many a good time with my young women friends, but I also know that they get into bad times. I know that there are times when they cannot trust an adult even to help them. I know that there are times when they live in a community where there is no clinic that is 24 hours. There is no emergency room to run over to. Those are scenarios, those of you who come from the north country know full well that, for some of your constituents, they live miles from a pharmacy or an all night 24 hour clinic or place, emergency room where they can get assistance. Those young women, whether 18 and under or above, are faced with horrible consequences. We heard that you cannot get into these except by using absence of contraception. Well there is such a thing as failure of contraceptive methods as well, and even the most reliable conscientious person can get into that scenario. We're not just talking about young women. We're talking about a case that I saw last night in reading up on this bill, of a woman who had five children who had, in her marriage, had a failure of method. What were her choices if she lived in the north country where she couldn't get to an emergency

room quickly? This method, this emergency contraceptive method, has been shown to reduce the number of unwanted pregnancies by 89 percent if you can get it. This Plan B or emergency contraceptive pill is not an abortifacient. It's more comparable to a high dose of oral contraceptives which many, many women have been taking and some of us from an older generation were in high doses back then. **TAPE CHANGE** significant long term health problems. And certainly, a one time episode does not cause the health dangers that a lifetime of young women especially, under the age of 18 facing nine months of a pregnancy and 19 years at least, of parenting. The other issue which really hasn't been talked about is what was heard in the hearing and I was not there. But the issue of domestic violence, sexual violence, assault, rape. We heard from the people who do this day in and day out, who assist young women in terrible circumstances of victims of sexual assault. We heard that the north country is of particular concern. They don't have a way at times to offer help to those young women, older women, who have been the victims of sexual assault. So they not only have to deal with the issue, the emotional issue, of having been assaulted, but the incredible worry that unless they can get one of those pills, they may have to carry to term, or face a worse option to have to carry to term, a child that they not only did not choose, but would always remind them of the assault that occurred to them. Those are some terrible choices. We have a chance to offer a decent choice, a choice of physicians training pharmacists. Pharmacists in a voluntary way, participating, offering greater choices. I think that we need to choose that choice, reject the age amendment because, as you heard, it is not just only women of a certain age who face these problems. I urge you to reject the floor amendment and to support the ought to pass on Senate Bill 30.

SENATOR HASSAN: Thank you, Mr. President. I also support the ought to pass and oppose the amendment that we are currently discussing. I rise with great affection in respect for every parent and every grandparent in this body. All of us care about the children in this state, and all of us bring our roles as parents and grandparents to this issue. But I want to speak, not only to that role, but to the second role that we assume here today, which is that of stewards of our state and policymakers for our state. This bill is tailored the way it is because the scientific fact is that this drug must be used within 24 hours to be effective. We want it to be effective because everyone in this body would like there to be fewer abortions, fewer unwanted pregnancies. So we need to find a way for women, regardless of their age, to have access to this drug within 24 hours. That is the reality. The reason that they need access within 24 hours is that an unwanted pregnancy is, with all due respect to Senator Boyce, not the same thing as strep throat. My heart breaks as a mother and as a Senator, at the very thought of young adolescents having sex. I believe that every other member of this chamber's heart breaks at the same thought as well. That is not the issue. My heart breaks more, however, at the thought of a young woman trying to have an early or late abortion because she couldn't get treatment early enough, or a young woman deciding with her parents or with other adults, to continue a pregnancy to term. And, by the way, we don't require parental permission for a woman to continue her pregnancy to term or for a girl to continue her pregnancy to term. My heart breaks at the thought of a young woman dying during that pregnancy, or having a stroke during that pregnancy, or having some of the other real health effects that pregnancy brings. This is not about a good decision. None of this feels good because

the very issue we are dealing with is a difficult terrible issue. But, at the end of the day, I know that there are young women who are victims of incest and rape who have no adults in their families to speak for them and to care for them and to consult with about this. At the end of the day, as a New Hampshire state Senator, my job is to speak for those women, those girls, as much as it is to speak for my own daughter and my own son. I do not believe that the punishment for inappropriate young behavior and youthful indiscretion, and unguarded sex, should be to force young women, young girls to stay pregnant or to have an abortion when there is an alternative. There is no good decision here, but at the end of the day, I, as a public servant, have a responsibility when a bad situation arises to allow us to treat it in the safest way for young girls throughout this state and for women throughout this state. This does not mean I like the fact that girls find themselves in this situation or if some of us believe, as many of us do, that they shouldn't be in this situation, I don't like it, but that's not the issue. The issue is what is safe for them. What will the long term consequences be? And what are the public health effects that we must consider? So, for that reason, I support this bill and I oppose this amendment, with great respect, as I said, and affection for the emotions that all of us feel about this issue. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in opposition to the amendment. I think we've heard from everyone. They have articulated their issue in a very clear and succinct manner, and really from the heart, because that is where this discussion comes from. As Senator Hassan points out, we're parents, we're grandparents, and if we aren't blessed with children, we know of other girls, other women. I think we talk about women, women, women. We are prejudiced towards the women because men have no problem at all. There is no problem. No problem with the guy. Bang. Huh, we always blame the woman. The sensible policy is to make it as restrictive as possible, to make it as effective as possible, and to put as many parameters as possible. We say that that pharmacist must be trained, that pharmacist must work with a physician, that pharmacist is in a position to counsel. That makes a lot of sense. God, if I could cure all of the incest and all of the rape, you know, I would be way ahead of the game. I'd be way ahead of the game. We all hear these horrendous stories, and the problem is, they're becoming more occurring all the time. I mean, look at what technology has done to the Internet. We only have to look Mr. President, to Keene, New Hampshire, to that detective in Keene whose been so vigilant and so helpful in addressing this kind of a situation. We have an opportunity to do the right thing, and we do that. And I respect everybody's decision, absolutely respect everybody's decision because we all make these decisions in good conscience with the best interest of our constituents. I oppose the amendment. I think the bill is a good piece of legislation. It's something we all should support because, as I said, it does the most positive things. It does things that we all want to see. We want to see better healthcare. We want to prevent abortions. We want to prevent unwanted pregnancies. And certainly we want to reduce costs. I mean, that is what we are all about. Thank you, Mr. President

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in opposition to the amendment. I, too, have a daughter who just finished her adolescent years and know many of her friends. I know that they live in a very challenging and complex world where they are bom-

barded by sexual imagery and all kinds of elements of a very permissive culture. I agree with Senator Hassan that we all do our best to raise these young women with good moral values and to care about themselves and their health. But, too often, they do make indiscreet choices, and let me say that they do not make those choices alone. It is very important to recognize that fact. But they carry the burden of that indiscretion if they become pregnant and are faced with the issue of having to carry an unintended child to term at a point in their lives when they are still, in so many ways, children, too. We are not opening the door to permissive sex by passing this legislation. What we are doing is providing an opportunity for women of all ages, during their childbearing years, to be able to have an immediate, safe and effective means to prevent conception and pregnancy from occurring when either they have made a terrible choice, they have been sexually assaulted, or contraception has failed. And I stand here today to say that that option to reduce unwanted, unplanned pregnancy, and to reduce abortions at the same time, is the right policy. We have put in place those protections for pharmacists. What we need to be making sure is that we create the protections and the choice for women of this state. That is what I am in favor of doing. Thank you.

SENATOR BARNES: Thank you, Mr. President. I find myself, as usual, between the rock and the hard place. I think my sixteen years up here I have always voted a certain way on this issue. As I...my first inclination is to vote against Senator Kenney's amendment. But as I'm sitting here and I'm listening to conversations, and I'm saying, my goodness, if I vote against Senator Kenney's amendment, and that amendment goes down, then we have the bill, Senator D'Allesandro's bill, which my count is going to pass and I can tell you the number if you really want to know. It is going to pass. My side of the issue is going to come out of this chamber with nothing. So I guess, and anybody else, any of my colleagues in here think this one out, I am against abortion, I always have been. No big surprise to anybody sitting here, for those of you who have watched over the years. So I am going to go for that piece of the apple because I think I am going to not be able to sleep too well tonight knowing that I have lost the whole cause that I believe in. So I'm going to take a bite out of that apple and those of you who might have that same problem that I do, I think that we should vote for Senator Kenney's amendment so we will have something for the folks out there to hang our hats on. Please think about that. That very difficult situation. I want to vote no on his amendment, and I want to vote on Senator D'Allesandro's bill, but for reasons I have stated, I am going to have to vote for that amendment. I am under the gun, but I am going to do it. Thank you.

SENATOR KENNEY: Senator Barnes, I know you very well and that takes a lot for you to come out with a statement like that. Could you vote for the amendment, but then vote against the bill, and then feel as though you go home and sleep tonight?

SENATOR BARNES: I am going to vote against Senator D'Allesandro's bill, yes. I certainly am.

SENATOR GOTTESMAN: Thank you, Mr. President. Most of this has been covered, but I just have a few comments. I look at the original bill and I am drawn to the attention of the fact that one of the groups that is involved in the recommendations of this legislation is the American Academy of Pediatrics, and we have forgotten that many of these people who this bill will relate to are nothing more than children. In my busi-

ness, in the practice of law, I have the fortune and misfortune, of having to observe situations where people have been raped, abused, become afraid of their own parents, been terrorized in their own homes, or just made a mistake. Some of these have led to adoptions. I have the distinct honor of having to read, on behalf of the adoptive parents, the history that brought the children their way. It is not very pleasant in many situations. All you have to do is go through your middle schools in your own communities or the high school in your community and you will realize life is not as it used to be. Becoming pregnant at any age, where a child is capable of conceiving, is happening every day. So I would be inclined to vote against Senator Kenney's amendment, although I understand his reasons for that. I think that women at any age deserve this protection and that is how I am going to vote. As far as the concern raised by Senator Boyce about people not being trained appropriately or we are giving this power to pharmacists who are not doctors, I just draw your attention to a couple of things that we are getting used to in our society. How many of you go to the doctor and actually see a doctor? Most of you see a physician's assistant. How many of you when you go to the lawyer, see the lawyer? Many of you see a paralegal. Some people even choose not to go to an obstetrician; they go to a midwife. That is their choice. The point is, it's all about the training, and this bill says, "the purpose of this act is to enable pharmacists with appropriate training." I draw your attention to that. I am comfortable that that training will give us the result that we are looking for. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. What a difference a year makes. I stood before this body last year and, if my memory serves me correct, I received 35 phone calls and I don't know how many radio ads, because I was the target for the vote. Twenty-seven of those people, when they called me, didn't understand that there was not a minimum age on that bill. I spoke to them, I responded to them. Once I told them that there was no age, they agreed with my position. There is a minimum age, and I certainly wouldn't have a problem if somebody wanted to bring an amendment forward that even said that somebody younger than that, accompanied by a guardian or an adult or their parent, would have the same ability as somebody that's over 18. I don't think that any 13 year old should have their pharmacist become their best friend on Saturday morning. I don't think that should happen. Certainly some of you are fortunate to have grandchildren and children. I don't have children and I don't have grandchildren. But, if I had a daughter, I would have a real problem thinking that the pharmacist might be her best friend on a Saturday morning. So with that, I am going to vote for Senator Kenney's amendment and vote down the bill. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President and thank you for allowing me to speak on this issue. It is really important. Number one, I am a father of a daughter; grandfather of five grandchildren., five granddaughters, and I have a great granddaughter. So I have a lot of women in my family. One of the things that I always promised myself when I came here, was that I would try to protect my family from any bad legislation. With that in mind, this bill is not about abortion, at least in my mind it is not about abortion. It's about contraception. I support Senator Kenney's amendment because it allows choice for women, adult women to make those choices. I think that it is important that you understand what my debate was about - women under 18 years of age who may not understand the dangers and the risks involved in taking this

type of drug. I have a problem, just like Senator Gatsas said, with the pharmacist becoming their best friend on Saturday morning. They should go to their mother and speak to their mother and their mother would certainly understand the problem and work it through. In the cases of rape and incest, they should throw those people in jail immediately. Those victims should be treated at the sexual assault rape centers that we have around the state and generally within 24 hours at least, at an emergency room. So I am going to support Senator Kenney's amendment and I am going to sit down now. Thank you very much.

Senator Hassan moved the question.

The question was moved without objection.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Kenney.

Seconded by Senator Barnes.

The following Senators voted Yes: Kenney, Boyce, Green, Clegg, Gatsas, Barnes, Letourneau, Morse.

The following Senators voted No: Gallus, Johnson, Burling, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Larsen, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 8 - Nays: 16

Floor amendment failed.

The question is on the motion of ought to pass.

A roll call was requested by Senator Kenney.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Burling, Green, Flanders, Odell, Eaton, Gottesman, Foster, Clegg, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Roberge, Bragdon, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 14 - Nays: 10

Adopted.

Ordered to third reading.

Recess.

Out of recess.

SB 119, establishing a committee to study exempting acute care rehabilitation from the nursing home moratorium. Health and Human Services Committee. Ought to pass, Vote 3-2. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Mr. President. I move Senate Bill 119 ought to pass. The bill establishes a committee to study exempting acute care rehabilitation facilities from the nursing home moratorium. Last year, Senate Bill 405, which would have released certain portions of the state from the moratorium, raised more questions than answers. This study will address those questions. Senate Bill 119 will look at exempting only the acute care rehab facilities from the moratorium. The study will also clarify definitions of acute rehab care, identify how to attract Medicare dollars as opposed to Medicaid dollars and will not cost

the state money. Rehab care provided in the VNAs and the outpatient departments at hospitals are all outside the scope of this bill. The committee recommends ought to pass on Senate Bill 119. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 171, establishing a committee to study HIV/AIDS service delivery. Health and Human Services Committee. Ought to pass with amendment, Vote 5-0. Senator Estabrook for the committee.

Health and Human Services

March 23, 2005

2005-0889s

01/04

Amendment to SB 171

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study HIV/AIDS service delivery.

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose.

I. The general court recognizes that:

- (a) Over 1,000 New Hampshire citizens are infected with HIV/AIDS;
- (b) This number would be higher if HIV/AIDS service organizations throughout New Hampshire were not delivering services through federal and grant funding, which is decreasing dramatically;
- (c) New Hampshire's hospitals, welfare offices, physicians, health departments, homeless shelters, mental health providers, and food pantries are increasingly unable to provide help to people living with HIV/AIDS;

(d) Without services, infection rates will rise and we will see escalating costs in treatment for seriously ill people and continued intravenous drug use;

(e) HIV/AIDS individuals in care are far more likely to live longer and act responsibly about transmission of HIV than people who are not in care; and

(f) New Hampshire has not directly supported services for HIV/AIDS care; therefore, future federal and grant funding will require greater state effort.

II. The general court therefore hereby establishes a commission to study HIV/AIDS service delivery systems.

2 Commission Established. There is established a commission to study HIV/AIDS service delivery systems.

3 Membership and Compensation.

1. The members of the commission shall be as follows:

(a) Three members of the senate, 2 of whom shall be from the health and human services committee, appointed by the president of the senate.

(b) Three members of the house of representatives, 2 of whom shall be from the health, human services and elderly affairs committee, appointed by the speaker of the house of representatives.

(c) Four representatives of New Hampshire AIDS service organizations, one each appointed by the directors of the following organizations:

(1) Southern New Hampshire HIV/AIDS Task Force.

(2) The Greater Manchester AIDS Project.

(3) AIDS Response Seacoast.

(4) Southern New Hampshire Integrated Care Program, Dartmouth-Hitchcock Medical Center.

(d) The administrator of the STD/HIV prevention section, department of health and human services, or designee.

(e) The director of the division of behavioral health, department of health and human services, or designee.

(f) Two consumers of AIDS services organizations, one appointed by the speaker of the house of representatives and one appointed by the president of the senate.

(g) One representative of the New Hampshire Medical Society, appointed by the society.

(h) A nurse licensed under RSA 326-B, appointed by the New Hampshire board of nursing.

II. The commission shall solicit information from the commissioner of the department of health and human services or any other person or entity the commission deems relevant to its study.

III. Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

4 Duties. The commission shall:

I. Research and recommend an effective service delivery system model for people living with HIV/AIDS in New Hampshire.

II. Investigate service delivery system models and associated fiscal issues of designation and distribution of funding in the other 5 New England states.

III. Assess the genuine care needs of persons living with HIV/AIDS in New Hampshire.

IV. Recommend levels of budgetary support necessary to implement a system model.

5 Chairperson; Quorum. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Eight members of the commission shall constitute a quorum.

6 Report. The commission shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

7 Effective Date. This act shall take effect upon its passage.

2005-0889s

AMENDED ANALYSIS

This bill establishes a commission to study HIV/AIDS service delivery.

SENATOR ESTABROOK: Thank you, Mr. President. The Health and Human Services Committee unanimously recommends Senate Bill 171 ought to pass with amendment. I would like to thank the committee and my Senate co-sponsors, Senator Odell, Senator Gallus, Senator Fuller Clark and Senator Kenney, for recognizing the need for this study. State-wide, there are approximately 1,000 individuals living with HIV/AIDS in New Hampshire. Estimates are there will be 52 new cases next year. We must not let the urgency which surrounded the initial effort to stem the spread of HIV/AIDs wane. This is a public health problem as much today as it was at the beginning of the epidemic. In fact, steady improve-

ments in health and life expectancy and avoidance of illness among the public are now jeopardized for the first time since the beginning of the epidemic. The greatest current problem facing New Hampshire's AIDS service organizations the prospect of declining federal support for these services. The initial Ryan White legislation is up for reauthorization this year, and since federal support is the only government funding available, the urgency of this study is quite real. The New Hampshire Department of Health and Human Services strongly supports this study. Doctor Kassler, the state Medical Director in fact, made a point of speaking to me a week after the committee's unanimous exec, to express his appreciation for the study's taking place, and that the Department has every interest in becoming more involved in this area. The committee's amendment changed the bill from a committee to a commission simply because we felt it was important to have all parties together on an ongoing basis rather than separately. I understand that, since the committee's unanimous passage of this bill, there has been some concern about the language in the purpose statement. Since the purpose statement will not affect the nature of the study, I am certainly willing to remove that section and, in fact, have a floor amendment that I would like to offer to do so today. So I would ask my colleagues' support of ought to pass with the committee amendment and then support for the floor amendment which will remove section one.

Recess.

Out of recess.

MOTION TO TABLE

Senator Clegg moved to have SB 171 laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Estabrook.

Seconded by Senator Foster.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Adopted.

LAIID ON THE TABLE

SB 171, establishing a committee to study HIV/AIDS service delivery.

SB 183, authorizing licensed medical adult day program facilities to assist clients with medication. Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. I move Senate Bill 183 ought to pass. The bill authorizes licensed medical adult day program facilities to assist clients with medication. Currently, clients of adult day care planners must hire a home care nurse to visit their home during the weekend in order to fill personal medication dispensers, also called "pill planners". Licensed adult day care nurses are trained to fill

the planners and, by authorizing them to do so will help elderly clients save some money on the weekend help. The committee recommends ought to pass on Senate Bill 183 and thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 216, establishing a commission to study area agencies and relative to rules regarding area agencies. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move Senate Bill 216 inexpedient to legislate. The bill would establish a commission to study the twelve existing area agencies. This bill also requires that the rules regarding area agencies shall not be amended until July 1, 2006. The Department of Health and Human Services has been studying the issue and engaging the area agencies for some time now and the provision that would prohibit amending the rules would effectively hamstring the department in its efforts to reform. The committee recommends inexpedient to legislate on Senate Bill 216 and I thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the motion on the floor and I ask you, my colleagues, to overturn that motion and pass this bill so that important work can be done to save the people of the state of New Hampshire money. I am going to give you a very compacted history of what's at stake here. There are twelve current area agencies providing essential services to the people of New Hampshire. The proposal that has come from the Commissioner of Health and Human Services is to drive two of those agencies out of business, to eliminate them as operative agencies. What I am about to tell you is the story of those agencies, or at least one of them that I am most familiar with, and ask you to think about the consequences. Go back to 1966. I wish I could, I was a lot thinner. In 1966, a group of citizens from Lebanon, New Hampshire and Enfield and Hanover, got together to create an agency, it was later known as United Disabilities Services, to provide services for people in the upper valley who needed the help with housing, with job preparation, with the day to day maintenance. That agency was formed in the fall of 1966. For the first nearly thirteen years of its existence, that agency provided services in the upper valley, UDS, with little or, in some years, no state assistance. It offered all the kinds of services that a volunteer agency can offer. It was incredibly successful given the fact that it was funded with grants and private donations. As its success grew and, as the impact that it had on the area became more recognizable, so the state began to offer funding to help it in its task. That agency, a corporation founded under the laws of the state of New Hampshire, subject to those laws, and run by a volunteer group of citizens from Hanover, Lebanon, Enfield and the upper valley area, has been providing services for 39 years. Come forward to just about June 4th of last year. June 4, 2004, unbeknownst to the trustees of UDS, there was a meeting at HHS. That meeting was a group of senior staff, and, as they very candidly told us at a meeting of the trustees three weeks ago, the staff at HHS made the following assumptions. They believed that the then Governor, Craig Benson, was going to be re-elected. They believed that the then Governor, Craig Benson was going to require a \$100 million in cuts to service agencies doing business in New Hampshire. They believed that, given that fact, the only thing they could do was start eliminating the administrations of various agencies. UDS was one of those agencies. Circle of

hope of course, as we now know, is the other agency that drew their attention. In that meeting, a group of staff at HHS, did what they called a "table plan" for "consolidating the twelve agencies into ten." That plan took place on a desk top without participation or information from any of the boards, staff, clients or members of the affected agencies, and it was made, we now know, on the basis of some rather faulty financial information. Perfectly clear that, in June of 2004, a decision was in fact taken to close down two agencies- UDS and Circle of Hope. Sorry, Center of Hope. And that decision was to be communicated at some point, to those agencies. The first notice that the trustees of UDS got of this was a letter from the Commissioner that said, "We are thinking about consolidations, we are thinking of reorganizations. We would like to engage you in a discussion." Very chummy, very obscure, no mention of the decision which had already been taken. No further communication occurred between the staff of HHS and the trustees or staff of UDS until late August of 2004, when a letter arrived from the Commissioner which said, "You will be prepared to go out of business by November 2004. You will hand over your assets, your client list and your staff lists to the personnel of another agency." It is in fact, the agency in Sullivan County. In response to that letter, the staff and senior leadership of the trustees of UDS went to meet with the Commissioner. The Commissioner said, "Well, we've taken this result and this is what we are going to do, you have to go out of business, and all of this is in result of a careful plan." The only plan that has taken place, we now know, was the June 4th desktop plan that was prepared, without consultation with anybody. The board of UDS, having been in business for 39 years, objected, as you might imagine, to being told that they were to go out of business and hand over their assets. They believe, and believe passionately, that the services they offer are offered efficiently and carefully and with affection for the people who require those services. This bill was brought first, by Representative Sue Almy and then, upon my election, by me, to do a couple of things that all of us have agreed to in the recent past. What are those things? This bill asks us to permit the people involved to study the issue before us, the proposed consolidation of agencies, and to try and work out in a rational manner, a way of going forward. What is the objective? Well we know what the objective is, because now we have had it told to us from HHS. They need to save \$400,000 by getting rid of two agencies. There is no evidence anywhere in the file that getting rid of these two agencies will save \$400,000, but they need the \$400,000; therefore, they want to get rid of these two agencies. This bill asks us to do what any ordinary citizen would do when told he has to jump off a bridge. It asks us to think about what we're doing, calculate the benefits and try to comprehend what the costs may be. This notion that somehow the Commissioner of HHS can compel consolidation is an absolute phony. There is no power in this room to order two established corporations, which exist under the laws of this state, to go out of business. If all twenty-four of us wanted to do that, we could not do it. There is no power in this room or in this building to order an independent corporation doing business as UDS in the Upper Valley to hand over its assets to anybody else. You can't do it. What you can do is you can authorize the Commissioner to only do business with ten agencies. But, what is the effect of that? Are you going to save \$400,000 by telling the Sullivan County Agency that it is going to take over an area twice the size, take on more than twice the clientele? Is that what you are going to do? Are they going to take over the debt of UDS? Are they going to take over the mortgage of UDS?

Are they going to share the trusteeships with UDS? The number of questions that remain unanswered boggles the mind. Everybody in here, regardless of party, is a smart enough business person to know that we would never dream of doing such a thing in our private lives. It wouldn't happen. So why is this happening? They need \$400,000 saved out of the budget of all twelve area agencies. There is a better way to get that. They could simply pass this bill and ask the people who represent the area agencies to sit down and come up with \$400,000 in savings. Breathtaking in its simplicity. You actually ask the people who know what they are doing, to find ways to work together. Have we ever done that before? Gosh, you know, we did it with Katie Beckett just last year. Thank God all of you were kind enough, when the House sent you that bill, you voted for it. You said, we're not going to go take these cuts out of Katie Beckett; we're going to study it and find ways to make savings. It is in a House Bill right now with regard to the mental health centers. Study the consolidation, study reorganizations, study cost savings. See if we can do all of those agencies more efficiently. It is only when you come to the area agencies that you find this effort being made to eliminate Center of Hope and UDS. I know how much all of us **TAPE CHANGE** assistance, which we offer them. I actually sat with the House Finance Committee the other night. It began at around two o'clock for me and I stayed 'til nine. I listened to them. The director of Center of Hope was here. She was spectacularly articulate. She asked us, "Please let us do the study. Don't just drive us out of business." The folks from UDS were here. Their clientele were here, trying to explain what those services mean in their lives. I please ask you, let's take the time to let these people think through a solution. We say we trust our constituents. We say we believe in the intelligence and self sufficiency of the people we represent. Here's an opportunity for us to help them help us by finding \$400,000. You are going to hear another couple of things and then I am done, Mr. President. Every one of us knows that this proposal for consolidation/elimination is before JLCAR. It is before JLCAR and it is being pursued relentlessly by the Commissioner. He needs the rule change so he can drive these agencies out of business. If that pursuit were not being so aggressively made, we might take time, but the Commissioner must have his rule change, and we must decide whether the policy of this state favors the continuation of effective, established, and capable voluntary organizations or whether we are going to just drive them out of business. If we drive them out of business, let's at least have the courage to look at the consequences that we will have brought about. There will be litigation. There will be people who are not served. Claremont, New Hampshire and Lebanon, New Hampshire are, by my odometer, 26.5 miles a part. You can't simply take over one from another and pretend that you're providing the same level of service. You can't do it. I have lived in that community since 1961. I guarantee you there is a difference between lower Grafton and the center of Sullivan. We should let people have a chance to do this right. I hope you will stand for that. I hope you will understand. I know the pressures have been intense. I appreciate all of you who have listened to me and I am done in a second. But think about the consequences. Are you really going to find \$400,000 by eliminating two agencies that have been serving our constituencies for more than 30 years? I don't think so.

SENATOR MARTEL: Thank you very much, Mr. President. I have an article here in front of me that was staff reporters in the *Union Leader* dated March 30, 2005. The title/headline is "*AG: Lebanon agency billed*

improperly." Finds that the attorney general has asked the United Development Services of Lebanon, "to return almost \$80,000 in the Medicaid program, alleging improper billing for day services at its Riverdale Parkway facility for four residents. Philip B. Bradley, Assistant Attorney General of Medicaid Fraud Unit, wrote Bruce Pacht, executive director of the UDS March 15 saying a review of the claims submitted by the agency raised two issues. First, Bradley said, it appeared UDS billed the program for excessive hours for day habilitation services in the first part of 2004. "The records we reviewed indicate that UDS billed more hours or units on many days than are supported by UDS's documentation. One result was the UDS reached its cap for reimbursable claims for day habilitation services by them began." I think this is the last one. This is just a short article, 'cause it continues talking about this. On April 26, 2004. And what they came to the conclusion was that "Unless UDS actually provided the full services for which it submitted a claim, its claims were, at the very least, inaccurate, and at worst fraudulent," the Assistant Attorney General wrote. I bring this article to my fellow Senators because it allows them to understand some of the issues that are present out there, and it is a sad epitaph, at the very least. So I urge that we vote no to the ITL on this bill. I ask that we vote yes, and there should be an amendment that will be admitted later on. I thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President, Senator. Senator, I sort of expected this so I have a would you believe.

SENATOR MARTEL: Good.

SENATOR BURLING: Would you believe that last Monday, not of this week, but the prior week, a letter arrived at UDS from the Deputy Attorney General? Would you further believe that, an hour prior to the arrival of that letter, laying out the accounting question, which you referenced in that article, there was a telephone call from the reporter at the *Union Leader* asking him about reports of financial irregularity? That reporter was Tom Fahey. Would you believe that apparently somebody, either at the Department of Justice, notified the *Union Leader* before the arrival of the letter raising the question? And, would you further believe, Senator, that for most of today, the parties, including the Attorney General referenced in that article, have been over in the Department of Justice settling the entire dispute about the misunderstanding that they had over this billing? Would you believe that it is my understanding that there is no question that all of the services discussed were, in fact, provided, but it was the form of the billing that was at question? And that, unlike what is in that article, the real controversy was the timing and presentation of the billing, not the fact that the \$80,000 is owed?

SENATOR MARTEL: I know the essence of the article and that is all that I can read from is what's in the article, Senator. I do...if you say so, then I would say that the probability is very high and it could be true. That is all that I can say.

SENATOR BURLING: Would you believe also that I believe, somebody, either the Department of Justice or HHS, notified the *Union Leader* precisely for the purpose of placing that article at this time?

SENATOR MARTEL: I can't prove that, Senator, but if you say so. I mean it is your...you came to that conclusion. I can't agree either side with that one 'cause I really don't know whether that happened or not.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the ITL and want to start my remarks by again thanking this chamber for the efforts it has made over the years to support New Hampshire citizens with disabilities in their families. Senator Burling referenced earlier the kindness of this body towards that community and that kindness is unquestioned. As many of you also know, I am a member of the disability community. My son has a severe disability. And sixteen years ago, if you had asked me what an area agency was, I wouldn't have been able to tell you. I would have thought it sounded like some kind of service agency if somebody had described it to me. Indeed that is the way we have talked about it today so far on this floor. Over the sixteen years of my son's life, I have thought less and less of these agencies as service agencies. I actually think they are not named appropriately because I believe they are truly freedom agencies. The core value of New Hampshire citizenship with United States citizenship is freedom. That freedom that we value for each of us, the ability for self determination, rests largely on our own physical independence. When you think about all of the things we do to be independent and contributing citizens, our physical independence and ability is essential to those tasks. What these agencies really do is they create a way in which people who are not blessed with full physical abilities and independence, they create a mechanism for these people to actually become free by offering them the support to be individual and contributing citizens to this great state and this great country. The Reverend Jones reminded us this morning that money can make people do odd things. Money is important. It is a way we talk about priorities and certainly none of us in this chamber can ignore the budget realities of this state. But to suggest that we would, without much thought and without any input from the very citizens and families that these agencies service, take an axe to two of them, I think is wrong. We are talking about freedom for a significant number of people in our state. And because we honor that value, I would ask you to honor the process that this bill represents and to defeat the ITL. Thank you very much.

SENATOR GATSAS: Senator Burling, if memory serves me correct, when I was sitting on that wonderful committee of JLCAR, looking out at the bright sunshine and blue skies on Fridays, I think I remember that this came before us sometime in October. Can you tell me that in the rules of JLCAR, does it only talk about two area agencies or does it talk about just consolidation and having the ability to consolidate wherever the department sees fit, and in what position in JLCAR is that rule at now? If you could kindly answer that question please or questions.

SENATOR BURLING: Thank you, Senator. I will give you the answer to the best of my ability. In the October submission, if I remember correctly, the rule change requested spoke about a generic power, not the specific elimination of these two agencies. I haven't seen the latest formulation of the requested rule change, though I have been informed that there are some amendments to the rule change that have been propounded. I believe that this is set to go before JLCAR on the 15th of April at their regular meeting. I believe at that time, if the votes are there, JLCAR can act to authorize, empower, the Commissioner or his deputy, to eliminate these two agencies. I have every reason to believe that that is exactly what he will do if he is given that power.

SENATOR GATSAS: Senator Burling, can you tell me, and maybe you can't, but maybe somebody else that is either now on JLCAR or was on it prior to, is that a final proposal that is before JLCAR on the 15th?

SENATOR BURLING: My understanding is that it is a final proposal. But, unlike some of you, I haven't had the chance to pull Betsey Patten off the floor of the House. My belief though is that it is a final proposal that is going to be before JLCAR on the 15th, but I see that Senator Estabrook is here and she can answer the question if you don't mind repeating it.

SENATOR ESTABROOK: Whether the proposal coming before JLCAR on the 15th is the final proposal?

SENATOR GATSAS: Yes.

SENATOR ESTABROOK: I don't think so. I don't believe so, but I could be wrong. I have it on my desk if you would like me to go and get somebody to go and get it or we can call over and find out.

SENATOR GREEN: Thank you, Mr. President. I haven't spoken today because I felt that there are a number of bills here that were going to be lengthy and it was just going to add to the length of the meeting. However, when I sense an injustice being taken place, I have the unequivocal urge to say something. I'm sorry. If you will take my words kindly, I'd appreciate it. This effort to consolidate these agencies is not just about these two agencies, in my opinion. Let me look at the big picture. The big picture is that we have a system that is in place to serve this population. This is only the beginning. Every other service agency in this state is going to be in jeopardy for the sake of saving money. The problem with that is this. I happened to have been around when the state of New Hampshire was sued when we closed the Laconia State School. I happened to be around when we got sued for the State Hospital. You know what? We lost both of them. So we decided that we were no longer going to provide these services at the state level; we were going to put them out into the communities. We were going to create an infrastructure that could serve this population. That was a decision that was made. We were forced into that decision by the courts. So we created a system. They didn't just all of a sudden pop out of nowhere. It was a system that was put in place to serve this population. Now we are trying to figure out a way to destroy this system, this infrastructure, because we had people in public office who felt the best thing the government could do was do nothing. Now we have a commissioner who delivers on that philosophy. I don't agree with that philosophy, because I think we lose sight of the fact even though we have desegregated or spread out the responsibility in terms of delivery, we still have the moral responsibility to fund those agencies. Now I'm not making an argument for any particular agency. I'm making an argument for the infrastructure. You start destroying the infrastructure and you will be right back in court and you're going to lose. You cannot win that argument. We are going to spend a lot more money than \$400,000 defending ourselves, because we aren't doing what we agreed to do and what we were ordered to do by the courts. What is all this? I am having a real hard time with this issue, but I'm looking at the big picture. I'm looking at Granite Care as it is proposed. I actually support some of the concepts in Granite Care. That is not my problem. You got to put money into it to make it work. It isn't going to happen out of thin air. Everybody wants to say, "Well, we took care of that, we took care of this," but we don't want to pay for it. Well you are going to have to pay for it or you are going to be forced to pay for it. Now in the meantime, while we're having this debate about whether we're going to do it or not, or whether we're going to be sued or not, how many lives are we affecting? That is the bottom line. How many people are being affected by this decision to close two agen-

cies? Let me tell you, it is going to be more than two before it is over. Those of you are sitting here real comfortable saying I am not affected, I'll tell you, you will be affected. You may not be getting any phone calls now, because your district is not being affected, but you are going to get them. Now, at some point in this process, we either support the infrastructure to deliver this or we have another system in place, but we fund it to put it in place. You can't just say we're not going to have this system in place without replacing it with something. Now I happen to think that the area agencies work. I came to that conclusion on my own after really investigating their operations, their budgets and the way they deliver services. You know who the best, best indicator in evaluating those services are? The people who are receiving the service. That is the people that evaluate these things. So I guess that I am saying to all of you, two things. Don't destroy the system for political purposes. Don't destroy the system because you think you're going to save money when you don't know if you are going to save money. It is very, very subjective. No one has shown me any numbers to verify that they can guarantee me that they will save \$400,000 and it is not going to cost any more to service those people in some other structure. That is a basic, logical, point of view. I hope. So this bill, as it was presented, and I read the hearing report, interesting hearing report if you read them. You know what? No one appeared against the legislation. Nobody. So what is the big deal now? Where was all this concern that some people have here about doing away with these agencies? I don't see anybody testifying to say that they don't want these agencies. So, I speak because I think that we're taking...we're going down a slippery road. I think we're going to create an injustice if we continue doing this. Now if you have a better plan to deliver the services and we can save money, I'm all for it. Not a problem. I don't hear anybody talking about another plan or a better way. This is not a better way to provide the service. This bill, by eliminating the service. But don't just say we're going to do away with things, we're going to save "X" number of dollars and we're going to not worry about the people who are being served. That is what is going to get us in trouble. I urge you, at this point, to defeat the motion of inexpedient to legislate and move on and pass the bill. Thank you very much, Mr. President.

SENATOR BARNES: Thank you, Mr. President. There are 12 agencies. Is that correct?

SENATOR GREEN: That is my understanding, yes sir.

SENATOR BARNES: Can you tell us where the other ten are?

SENATOR GREEN: No. Off the top of my head, I cannot Senator, but they are all over the state.

SENATOR BARNES: Could you defer to someone who might be able to tell us where they are?

SENATOR GREEN: I don't know if anybody here knows where all twelve agencies are. Does anybody? I would have to have a map in front of me, Senator. There are a lot of agencies that we deal with and this particular group of agencies...I would say that I know that there is at least one in every town. Okay? That I know. I suspect that there might be more than one in Hillsborough County and I suspect there is probably more than one...you see, it is based on the county structure and population.

SENATOR BARNES: Thank you, Senator.

SENATOR LARSEN: Thank you, Mr. President. This bill is wrong. We need to pass this bill. The action that this bill is seeking to prevent, there are two things. One, what we have, if, unless we pass this bill, is the possibility that we will in fact have a state agency that acts and usurps what is under legislative discussion right now. The budget in the House, they have been discussing this. They have been discussing whether to add this into or take it out of the budget in the House. Yet JLCAR, on April 15th will have what we now hear is a final proposal, which will, if not eliminated or objected to, will enable a state agency to take an action that the legislature has not directed them to take. The second part of this problem, this bill, the reason we want to see it passed, is that in fact we are backing out on a promise we made to the people of this state. The people with disabilities and their families. The promise that we made when we decentralized our system of support by closing Laconia State School. We made a promise that they would be taken care of in their communities. The area agencies are in fact, were a thoughtfully created system of agencies that allowed geographic, people to reach these agencies because they are in the proper areas to be driven to within a reasonable amount of time. It was a thoughtful delivery system for twelve of them, as you heard, established, based on population. But, when you begin to say that we are going to consolidate these, what do you do to wait times for the need for services? What do you do to the agencies that all of a sudden are taking care of two regions that used to take care of one? We don't know the answers to that, but I can tell you that 1) it ought to be a discussion in our budget; 2) it ought to be very thoughtfully entered into because what we have now may not be a perfect system, but it's oftentimes been looked at as a model system in the nation for the delivery of services to people with disabilities. Finally, I would say, why are we always looking to those who are most in need of our services to cut? Those I think, are issues which we need to consider very carefully. I believe that we need to reject this inexpedient to legislate motion and in fact pass Senate Bill 216 with its moratorium, giving us time to discuss its full effect. Thank you.

SENATOR MORSE: Thank you, Mr. President. The difficult time I have here is that basically everybody is saying Finance, you are going to cut \$400,000. The Senator just suggested that this should be discussed in the budget. I think I have been a big supporter of this group. It is dear to me and I haven't walked away from them. But there are two things happening here today. One is JLCAR, which basically is the threat to this piece of legislation. Well JLCAR is going to happen on the 15th no matter what happens with this piece of legislation. No matter what happens, that meeting is going to happen and whatever JLCAR decides to do is a totally separate issue. What is in this piece of legislation, and out of respect for a colleague, I said I wouldn't move the tabling motion, I let the debate happen. But knowing the reality is that a section of this is going to be cut out. That section would not let us have the debate in Finance. One of the things when John Stephen came into Finance two weeks ago, that I promised to the Finance Committee and made very clear to John Stephen and have made clear in my draft, for how I want to hold the meetings, is that we need to, as a Senate, go line by line by line, and walk through a good management process with his department. He suggested an awful lot. Now I will be the first to say I don't believe that is what the House has done. John sent over a letter, the House cut that and more, and I don't think it was done with looking at management first. But by passing this bill in full, we can't be good managers

also. I don't believe that by passing this in full, that this bill will be passage of the budget. It is going to end at the same time. That is why I supported a tabling motion. But, I have learned a lot today and I know where most of my colleagues fall on this. So my point being on this, I haven't walked away from this group of people. I think this is a budget debate. I think he has presented an awful lot that needs to be discussed. I think the agencies know that because they have been to me to say that they are willing to discuss it, and they want to work with us. It is not down to whether or not this is a \$400,000 decision at this point, because I don't believe that is anywhere where we are right now. I would support the fact, originally to table, but today I will support the fact that we vote on the inexpedient to pass this bill and to take out the section. I will go with what the body decided earlier today or half the body did, but the fact is, we need time to work this out. It is going to take a couple of months. I don't think this would pass from the House to the Governor in that period of time. Thank you.

SENATOR GREEN: Thank you, Mr. President. Senator, I hear what you just said. I understand your thought process in it; however, may I ask a very simple question, which I think gets lost around here sometimes? Do you believe that JLCAR has the authority to make rules that are inconsistent with statutes?

SENATOR MORSE: Senator, that is why I said you have two different discussions here. If this body wants to go fight at JLCAR, I think they have the obligation to do it and the right to do it. But that is not the issue that I am dealing with here right now, as someone that is working with Finance.

SENATOR GREEN: I understand there are two questions, but the question of JLCAR...all I guess I am saying is, if we pass this legislation, and we make it clear, we are going to have a study committee, that we don't expect JLCAR to be functioning in this are 'til the legislature makes up its mind, is that not important?

SENATOR MORSE: I don't believe that will do a thing.

SENATOR GREEN: Is it important for us to send that message?

SENATOR MORSE: If you believe that, Senator.

SENATOR GREEN: I do believe it.

SENATOR KENNEY: Thank you, Mr. President. I just wanted to speak because one of the area agencies that are in question is in my backyard, the Center of Hope in Conway. In Center Conway, Center of Hope has provided excellent services for over the last 25 to 30 years. One of the issues I just want to bring out and just kind of zoom in on 'cause I know that the time is late here, is that when we are talking about consolidation, okay, that is a separate issue. But what the Center of Hope has been doing the last several years is they have been trying to come up with cost efficiencies. In doing that, my feeling is that they have actually met a lot of those objections that the Commissioner had and have been doing it slowly, steadily along. For instance, in the last...for this fiscal year '06, their general management cost will decrease by 8.6 percent. Now when you look at what it costs the state averages of...to run the other agencies, the Center of Hope, their costs are a lot lower. So when I look at the Center of Hope, their mission is to be progressive, efficiently run their organization. They welcome change, as long as it clearly benefits the individuals and the families that it serves; however in the changes

in the service of the delivery system, must be carefully designed and managed in order to anticipate the impact on the people's lives. Why are we in government? We are here for the people. This is impacting my area agency and I am here to represent them today and say that I would support the overturn of the ITL and that we pass this bill or some variation of it, so that we can at least slow this engine down and look at the area agencies that are supposedly being consolidated and ask the stakeholders to get in there and roll up their sleeves just a little bit higher and see where we can come up with some more cost efficiencies. I think we owe that to the agencies, but I think more importantly, we owe that to the people that we represent.

SENATOR GATSAS: Thank you, Mr. President. I have all the respect in the world for Senator Morse. He doesn't have an easy task on his shoulders to find the areas that certainly we can work within our means and not affect people in an adverse position. But I think it is important to understand, for all of us that have sat through JLCAR, that we're in a final proposal. What that means is if there are no objections, April 15th, it happens. It doesn't matter what we do in Finance. It doesn't matter if Senator Morse finds every single way possible to preserve what he believes is right, and that committee preserves what they believe is right. This still allows Health and Human Services to follow the task of what the rules say. I think it is important that we understand that, because even the adjustments that committee may make, and we vote on as a body in here, they can take a twisted turn because those rules are in effect over and above what we may find is just in the budget and we vote on as a body and maybe pass it through both the House and the Senate. I think it is important that we have those discussions in Finance, because I think that Senator Morse and that committee should have every tool available to it, to make every wise decision for the people in the state of New Hampshire. So we have one of two choices. One, if you send a loud enough message, the members on JLCAR can talk about a Concurrent Resolution that freezes everything until the budget process goes through and until that committee has the ability to ask the questions they need to ask. Certainly, if that committee decides that consolidation is the best way for the state of New Hampshire, and that services are not going to be reduced, then certainly I will listen and believe what I hear from my fellow Senators. But until that happens, this could happen on the 15th, way before Senator Morse and that committee has the obligation to take a look at what is right and wrong for the people in New Hampshire. So I don't know how we fix it because he is right. The budget is not going to be here by then. We are not going to have the position to take. He is not going to be able to do his in-depth analysis. So, if we feel strongly that we should be protecting the people of New Hampshire who have the quietest voice, and there is no question if the Attorney General thinks that some agency is doing something wrong, then I certainly believe that they should be reprimanded and whatever fines and things that have to happen, happen. But we have a rule that is in JLCAR, and on the 15th, if there is no objection, it happens. I can't tell you what that rule says because I am no longer there. I don't know how severe the rule is and I don't know what the components of the rule are. But I urge my colleagues that we take a position that we find that out. And whether we find it out today or not, we need to get an answer before we allow something like that to happen. Thank you, Mr. President.

Recess.

Out of recess.

The question is on the committee report of inexpedient to legislate.

Motion failed.

Senator Boyce moved ought to pass.

Senator Boyce offered a floor amendment.

Sen. Eaton, Dist. 10

Sen. Barnes, Dist. 17

Sen. Letourneau, Dist. 19

Sen. Martel, Dist. 18

Sen. Boyce, Dist. 4

Sen. Morse, Dist. 22

Sen. Flanders, Dist. 7

Sen. Roberge, Dist. 9

Sen. Clegg, Dist. 14

Sen. Gallus, Dist. 1

Sen. Johnson, Dist. 2

March 31, 2005

2005-0983s

01/09

Floor Amendment to SB 216

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study area agencies.

Amend the bill by deleting section 6 and renumbering the original section 7 to read as 6.

2005-0983s

AMENDED ANALYSIS

The bill establishes a commission to study the 12 existing area agencies.

SENATOR BOYCE: Thank you, Mr. President. I will speak to the amendment if I could. If I can find my copy. The amendment removes section six of the bill, which is the moratorium on rule changes. The intent of this is simply to allow the study to go forward with no intention of anything being...the budget being hamstrung, the Finance Committee being hamstrung on the process, and simply allows the situation to proceed in the way that it is already in motion. Thank you.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the adoption of the floor amendment. I am simply going to make the points that we have all heard here already. Unless this body is prepared to make a strong statement, preserving the status quo while our fellow citizens are empowered to make a study, and unless we make a policy statement that protects the deliberations of our own Finance Committee on April 15th, the final rule proposal will become effective. I don't have the votes to stop it. Remember, we're the minority party. They will do it. Two agencies will go out of existence and the consequences then will become Senator Morse's problem. I respectfully request, let's pass the bill as introduced and proceed as diligently as we can to try to figure out what we can do. I would also just say I don't know whether this is true or not, but several of you said to me that a comment was circulating that this rule was in a preliminary phase and there was nothing to worry about, it was simply just getting started. It is consistent with

the whole way that this has proceeded that there has been a certain amount of confusion as to what the truth is. We have looked at the document. It is a final rule proposal. It is cast in bronze on the 15th. Senator Estabrook doesn't have the horsepower to stop it by herself. Thank you, Mr. President.

SENATOR FOSTER: Thank you, Mr. President. This amendment, as I understand it, takes out the moratorium. So what is it we would be studying? I mean, the rule would move forward and, as we are studying, the rule might kind of make the study moot, not matter what we decide in the study. Is that possible?

SENATOR BURLING: I would think that is clear. In fact, my experience would suggest that no committee will ever be formed because nobody will be foolish enough to think there is any purpose left to serve.

SENATOR FOSTER: Thank you.

SENATOR GREEN: Thank you, Mr. President. Let me see if I can clarify the situation as I understand it. If you take out section six, you have taken out the section that stops any further rule adoption while the study committee is working. So, if you really want to send a message that you are not going to entertain as a legislature any rule changes while this study is underway, that is the message...that section. To take that out, you accomplish nothing except allowing the rule to go forward, and for all intents and purposes, making the study committee useless. I would say to you that it is very important that we send this message, not just to JLCAR, but to the courts. Let me tell you why. The courts have, in the past, thrown out administrative rules when it has been proven to them that there has been opposition to the rule or there was support for the rule and they didn't adopt it. For the record, one of those rules that were passed inconsistent with the state legislature's position, was overturned and the person who had that rule was Commissioner Stephen as the Deputy Commissioner of Safety. So the issue is he needs that rule. If you take out section six, you have allowed the rule to be adopted. Now, that sends the message that the legislature has no position on this rule. Do we have a position or don't we? If we have a position that we do not want that rule to go into effect, then you better keep section six in this bill. If you just want to let it go willy-nilly, and let the rule go into effect, you are just wasting your time with the study committee because if the rule becomes the rule unless you pass a statute after that, that changes the rule. Which by the way, this one here ended up going to Commissioner Stephen. Eventually he got enough votes in the legislature to adopt the statute to put into the statute, the rule that he couldn't pass, that the court wouldn't let him do what was inconsistent with the will of the legislature. I happen to think the will of the legislature is very important. By the way, it is my true belief in a court of law, that a statute does and is more important than a rule. There have been people around here, and I got very frustrated last session, 'cause there were people in Rules, people that sat on Rules know what I'm talking about when we are trying to pass rules as the same thing as a statute that had just been defeated, and they were trying to get the same thing into rules. So don't tell me that rules are important. And it is important that we send a message. We better send the right message. If you don't send this message, you have given the green light to Rules to go ahead and proceed. I think that you do not want to pass this amendment. You'd better not pass it because then you have said, "We don't

really care, you guys do what you want with Rules.” I ask you to defeat the amendment and pass the bill as it was originally introduced to this body. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I will be brief. I just wanted to say that, as I read the proposal coming to JLCAR, as Senator Green said earlier, it's not a proposal that just deals with the merger that is on the table right now. It gives the Commissioner free authority going forward to make any mergers he deems appropriate without legislative approval. I agree with Senator Green that is very dangerous and not something we should allow to happen. The other thing I would like to add to the debate here is that I represent an area where a mental health agency and a developmental disabilities agency were merged under difficult circumstances because the mental health agency went under. That was a very, very difficult merger. It wasn't undertaken to save money, but it was anticipated that perhaps it would save money, just as we are anticipating perhaps these mergers will save money. Well the result was very little money was saved. I think, in that case, things worked out because the agencies were cooperating, everybody wanted to see it work. But to force a merger upon local agencies that are not interested in cooperatively creating the best solutions, but are being forced to, I think is not in the best interest of the clients they serve, and I agree we should not let that happen.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Burling.

Seconded by Senator Estabrook.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SJR 3, encouraging the New Hampshire Congressional delegation to support the federal Child Custody Protection Act. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Mr. President. I move Senate Joint Resolution 3 inexpedient to legislate. This resolution would encourage the New Hampshire Congressional delegation to support the federal Child Custody Protection Act, an act prohibiting taking minors across state lines in circumvention of laws requiring involvement of parents in abortion decisions. The resolution has great potential to actually hurt those it purports to help and sends the wrong message to our Congressional delegation. By discouraging discussion between young women and adults, our most vulnerable people will lose a trusted resource at a criti-

cal time in their lives. Ultimately, the bill creates more problems than it solves and the committee recommends inexpedient to legislate on Senate Joint Resolution 3. Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. This is my bill; I brought it in. It's a fairly simple bill. It's simply asking the Congress to pass this bill that's called the Child Custody Protection Act. I believe, about a year ago, we passed a bill, which the courts have somehow tied up on us, that would prevent a child from having an abortion without consulting with a responsible adult, a judge or a parent. Other states have that law that has not been challenged, has not been overturned by their courts. Our neighbor to the south has such a law. The point of this bill that we are asking Congress to pass is simply to say that, if a state has that type of law where it says that a child, in order to have an abortion has to have a discussion with a responsible adult, which could be a judge, it could be a parent, and depending on the state, it could be some other person. But those state laws say that they cannot get an abortion without that process. This federal law would simply say that it would be illegal for an adult to take a child across state lines for the purpose of having an abortion where it would not be legal to do so in their own state. That's all this bill is doing is asking Congress to stand up for the state rights. The states have a right to decide what should happen within their borders. We're simply saying that the federal government should enforce that right and say that people shouldn't be crossing state lines for these purposes. As I say, it is a very simple bill. We have a bill that, if the courts ever figure out how to fix it for us, we will let them legislate again for us...no, I am sorry, they don't legislate. We legislate, they simply tell us what we can and can't do. But if we decide to somehow say "Mother May I" to the courts, and get a bill that does stand up, then we would have this protection that somebody couldn't take one of our daughters to some other state and have an abortion where we say that they can't do it here. So I would ask that you overturn the committee's vote of ITL and let me put in an ought to pass. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. Senator Boyce, did I hear you say that the Child Custody Protection Act, which I must say I think is misnamed, would prevent a parent from taking their own child across state lines?

SENATOR BOYCE: No, because if their state had a law that said that the parent had to be informed, I would assume that if a parent was taking their own child across the state line that they had been informed that that's what they were doing. No, it would be that someone taking a child, not necessarily their own child, because, of course, that would be irrelevant. It would be someone taking another child. For instance, if some person over the age of consent, some male, decided to impregnate some fifteen year old and knew that, with DNA testing and so forth, the crime that they have committed could be prosecuted if the evidence was preserved, and he knew that by taking this child across the state line, he could have that evidence permanently obliterated. There would be no evidence of his crime. The child would not exist. So the DNA evidence would never be brought forward to court, to prove that he had in fact committed, probably a felony, in impregnating this young girl. So I am saying that this is to prevent someone other than a parent from taking a child across state lines for the purpose of having an abortion in contravention of a state law saying that they cannot have that child have an abortion within their own state.

SENATOR ESTABROOK: Aren't there other laws that would be existing laws that would be violated in such a circumstance?

SENATOR BOYCE: Probably the one that says that it's illegal for an adult to have sex with a minor. That might be one of the laws that is being violated. But then, if the evidence is disposed of, then it's hard to prosecute I suppose. There might be other laws. I don't know.

SENATOR ESTABROOK: Thank you.

SENATOR BARNES: Thank you, Mr. President, but Senator Boyce answered my question. It was going to be whether he is asking for inexpedient.

SENATOR HASSAN: Senator Boyce, so under this bill if a teenager in Massachusetts, which I do understand has a parental consent or judicial consent statute. If a teenager in Massachusetts is raped by her father and she calls her aunt in New Hampshire where we currently don't have parental notification, and asks her aunt to come and get her, and her aunt complies and brings her into New Hampshire, and later on that teenager decides that she should have an abortion, the aunt could be prosecuted under this statute. Is that correct?

SENATOR BOYCE: I'm not sure who could be prosecuted under this federal statute, because it would be a federal statute, and I'm not really familiar with those. However, the aunt should simply say, "Let's go talk to a judge." Because that is what their laws says. Their law says that you can talk to a parent or you can talk to a judge. You don't have to take them across the state line to have an abortion. You can have abortion in Massachusetts, if you talk to a parent or you talk to a judge. We put a lot of trust in our judges, I guess. They trust their judges as well. They're saying that if a judge says it's okay, it's okay. So you don't have to take somebody across the state line from Massachusetts, unless there is some nefarious purpose. I can't see any legitimate purpose for doing it, unless you have some fear of judges. But the situation is that I see only criminals who would want to do this, so I think they should be treated as criminals.

SENATOR HASSAN: Thank you.

SENATOR LETOURNEAU: This is a question. Didn't we pass a bill last year, Senator Boyce, that made it legal to bring dogs into the state of New Hampshire for the purpose of euthanasia?

SENATOR BOYCE: I remember something dealing with that.

SENATOR LETOURNEAU: Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I think what we are buying here if we go with this is a pig in a poke. Because we're being asked to pass an anti-choice piece of legislation which this body usually debates long and hard if we're going to go in that direction. And we are being asked to do that simply on faith because there is a federal statute called Child Custody Protection Act, and it has a lovely name. As a member of the committee, I have never seen the federal Child Custody Protection Act. We have no idea what it really says. The Transportation Committee rejected a proposal to allow us to adopt transportation rules from the state of California and yet here we have, without even knowing what we are adopting, a proposal to adopt a federal statute we have never seen on a very serious subject affecting people's personal lives. I think it is clear that we should reject it. Thank you.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Barnes.

Seconded by Senator Boyce.

The following Senators voted Yes: Gallus, Kenney, Burling, Flanders, Odell, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Boyce, Green, Roberge, Barnes, Letourneau.

Yeas: 18 - Nays: 6

Committee report of inexpedient to legislate is adopted.

SB 47, relative to the definition of "party" or "parties" for the apportionment of fault in civil litigation. Judiciary Committee. Ought to pass, Vote 4-2. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. In light of the fact that there will be party or parties following the session, this seems to be appropriate. I move Senate Bill 47 ought to pass. Senate Bill 47 corrects a consequence of the ruling in Nilsson v. Bierman where the New Hampshire Supreme Court ordered that the word "parties" was intended to include not only the claimant in the action as well as the defendants in the case, but also any individuals or entities who had already settled their case. This ruling created the "empty chair" defense against persons who are not present in court to defend themselves. Prior to the Nilsson ruling, the statute had been in effect for eighteen years and was working quite well. The Judiciary Committee recommends that this legislation be adopted and asks your support. Thank you. And, Mr. President, if I could make my comments now, I would appreciate it. This is a very unusual case and I have read the Nilsson case many times now to try to understand the rationale that the Supreme Court had and the Superior Court below it had. Frankly, it is a very, very confusing case. So I just want to set that thought aside for the moment. Perhaps the unintended result of this case is that, if you're not allowed to let people out of the case, then the people that you might otherwise want to let out of a case, if you had a claim against them, will not be let out of the case. Any small players in a case who say they want to be let go because they have a small part in the case, they will not be let out of a case. Unfortunately, that will increase the cost of litigation. I have heard from...I have seen all the literature that has been sent around. I appreciate all of the perspective of the people who represent the insurance industry and the Medical Society and the like. But, at the bottom line here, the plaintiff in this particular case, went under-compensated for a claim that they had because the court, on its own, without a request of either of the attorneys, gave an instruction that said, not only will you consider the negligence of the persons before this court, but you will also consider the negligence of the person outside of the court. Now that may seem reasonable to some people, but it is contrary to what the law in this state has been for the last eighteen years created by this legislature. In the past, negligence was determined if a person was let out of a case, that became a credit against anybody else, against whom a verdict was rendered in the case. That is now changing. Unfortunately, as I say, if you have a medical malpractice case and you are going to sue a hospital, a doctor, an anesthesiologist, and a sub-specialist, those people are going to be players 'til the very end. So, when your constituents call you and

say we can't get our people let out of these cases, you will be able to point to this particular situation and say this is why it happened. I know that many of you will have questions. It is a very confusing case. But I think that this statute can be amended to correct the anomaly that the Supreme Court caused under these circumstances. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I am opposed to the ought to pass motion on this bill. This bill, as Senator Gottesman just mentioned, allows everyone that is within an entity to have to be part of a case, a court case, in a lawsuit or even for damages. They will never, ever be able prove, okay, any negligence when you start having the janitor all the way to through to the cook and all the way through the physician, all the way up the chain of command to the CEO of a hospital or a facility or even in a doctor's office. This is a bill, that I believe, in my reasoning is extremely dangerous, and the ought to pass motion should be overturned. I plan on voting against it, Mr. President, because it does set the table the wrong way. I want to protect people, my constituents, the best way I can. Like I said before, they voted us in the office and they deserve the protection. I believe this particular bill does not protect them. So I urge overturning of the committee report and I thank you, Mr. President.

SENATOR FLANDERS: Thank you, Mr. President. I speak as chairman of the Insurance Committee. My opinion is that this is a very poor bill concerning insurance. You heard Senator Gottesman get up and speak that this bill does save cost of litigation, but I didn't hear him say anything about cost of insurance payments. So I am looking at it from what insurance pay out, he's looking at it from cost of litigation. If I may just take a minute and make sure I understand this correctly. The case that we are talking about is an automobile case where...and I want you all to be Car A. Car A is going down the road and it has a passenger. It is going the speed limit and everything is fine. It goes through a through way and there is a stop sign on both sides. A car comes through the stop sign, going too fast. Goes through the stop sign and hits Car A in the rear. Okay? And you're driving Car A. Now when I was in the insurance business, I don't think its changed, if you've got a low policy, you are bound to let that low policy be known, because if you don't and you get a verdict above that low policy, you are hung for the complete verdict. So if you've got a low policy, which in this case we have a \$25,000 policy, I am the insurance adjuster. Now remember, when we talk payment, we're talking insurance payment. This is not people's pocket money. It is insurance payment. I think we all know from the calls that we've got about health insurance in the past, that when health insurance costs go up, premiums go up. Keep that in the back of your minds please. So I am the insurance adjuster and I go out and I say, "Here's my policy, \$25,000. You can have it. I've done it. I am at fault. I went through the stop sign. I was going too fast." So you take your \$25,000 and you go home. The insurance company goes home. So this attorney decided that this car that did nothing wrong, that they were going to take him to court, and they did. And they had a jury trial. And the jury said, "The case is worth \$114,000" or something like that. And they said, "You, driver A are one percent negligent." So guess what? The insurance company of driver A paid one percent of \$114,000. That sound pretty good? This sound the way negligent ought to be? Does this sound like if you're at fault that's what you should pay? Now this is what they want to do.

They want that same jury to say one percent at fault and pay the remainder of \$25,000 to the \$114,000. I am not at fault. I didn't do a thing wrong and I am going to pay \$115,000 or my company is. Does this make any sense? Does it make any sense? What's going to happen is that the attorneys are going to say, get rid of you guys, let's get the big bucks in the court, 'cause we don't care whether there is any liability or not. Once we get you in there, we are going to get our money. That is what this bill does. I ask you to defeat it. I will remind you that we are now talking about taking the liability out of negligence and putting in money for liability. Thank you very much.

SENATOR GOTTESMAN: Senator Flanders, do you know what would have happened had the court not given the instruction that it gave in this case and what the standard would be for the plaintiff to prove negligence against the person who only had one percent in negligence? Do you know what the standard is? I can help you with that if you'd like to know.

SENATOR FLANDERS: Please do. Please do.

SENATOR GOTTESMAN: Would you believe that the plaintiff would have to prove that it was more probable than not, that the defendant in that case, who is actually before the court, was actually negligent under those circumstances. If the plaintiff could not prove that, then a jury of these people's peers, would decide that there was no negligence. But because they allowed someone else outside the court to be included in the calculation, they came up with this formula, which only left one percent for the person in the courtroom. Do you understand that to be the case?

SENATOR FLANDERS: I do understand that.

SENATOR GOTTESMAN: Thank you.

SENATOR FLANDERS: May I answer by saying that is also my opinion, like probably everybody in this room, if you had uninsured or underinsured motorists, wouldn't have been there. Any state such as New Hampshire that does not have mandatory insurance should be carrying, and that's what they should have done to protect themselves. This driver who didn't do anything wrong, that insurance carrier should not have been made to pay \$115,000.

SENATOR CLEGG: Thank you, Mr. President. I would just like to clarify something. I know that the chair of the Insurance Committee felt that this was a poorly written bill from an insurance company standpoint. I would just like to point out that the Judiciary Committee looks at a bill more from the justice to the public and not from an insurance company's standpoint. So I hope he understands that we wrote the bill looking to protect those who might end up in court, or who might get a portion of a claim appropriated to them while they are not even in front of the court. Thank you.

SENATOR FLANDERS: I just want to respond by saying you are absolutely right. I am doing the same thing because I am looking for the person who is paying the premium.

The question is on the motion of ought to pass.

A roll call was requested by Senator Foster.

Seconded by Senator Clegg.

The following Senators voted Yes: Burling, Gottesman, Clegg, Letourneau, D'Allesandro, Hassan.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Foster, Larsen, Gatsas, Barnes, Martel, Estabrook, Morse, Fuller Clark.

Yeas: 6 - Nays: 18

Motion failed.

Senator Flanders moved inexpedient to legislate.

Adopted.

SB 47 is inexpedient to legislate.

SB 56, relative to nonuse of a seat belt as evidence in a civil action. Judiciary Committee. Ought to pass with amendment, Vote 5-1. Senator Clegg for the committee.

Senate Judiciary

March 23, 2005

2005-0901s

06/04

Amendment to SB 56

Amend the title of the bill by replacing it with the following:

AN ACT relative to penalties for eluding pursuit by a law enforcement officer.

Amend the bill by replacing all after the enacting clause with the following:

1 Disobeying an Officer; Eluding Pursuit. Amend RSA 265:4, I(c) to read as follows:

(c) Purposely neglect to stop when signaled to stop by any law enforcement officer who is in uniform or who displays his badge conspicuously on the outside of his outer coat or garment, or who signals such person to stop by means of any authorized audible or visual emergency warning signals[;], or otherwise willfully attempt to elude pursuit by a law enforcement officer [by increasing] ***without an increase in*** speed, extinguishing headlamps while still in motion, ***or*** abandoning a vehicle while being pursued, ***provided that a person shall not be deemed to be attempting to elude pursuit if such person is signaled to stop at night by a law enforcement officer and elects to proceed to the nearest well-lighted public place;***

2 Disobeying an Officer; Penalties. Amend RSA 265:4, III(b) to read as follows:

(b) Any person who violates the provisions of subparagraph I(c)[,] and is involved in a motor vehicle accident which causes serious bodily injury as defined in RSA 625:11, VI while being pursued, ***or who willfully attempts to elude pursuit by a law enforcement officer by increasing speed to 25 miles per hour or more over the posted speed limit and committing 2 or more additional traffic violations,*** shall be guilty of a class B felony.

3 Effective Date. This act shall take effect January 1, 2006.

2005-0901s

AMENDED ANALYSIS

This bill makes the penalty for willfully attempting to evade pursuit by a law enforcement officer by increasing speed to 25 miles per hour or more over the posted speed limit and committing 2 or more additional traffic violations a class B felony.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 56 ought to pass with amendment. The committee amendment completely guts the original bill dealing with use of seat belts and replaces it with penalties for eluding pursuit by a law enforcement officer. The committee amendment specifies that anyone who willfully attempts to elude pursuit by increasing their speed 25 miles per hour or more over the posted speed limit, and also commits two or more additional traffic violations, will be guilty of a Class B felony. The other part of the amendment allows an individual who is signaled to stop at night by a law enforcement officer to proceed to the nearest well-illuminated public place. The Judiciary Committee recommends this legislation be adopted as amended and asks for your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 61, relative to judges giving notice of intent to retire. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

Senate Judiciary

March 23, 2005

2005-0900s

10/09

Amendment to SB 61

Amend RSA 493:3 as inserted by section 1 of the bill by replacing it with the following:

493:3 Optional Retirement. Any supreme or superior court judge, full-time district court judge, or full-time probate court judge who is eligible to retire pursuant to the provisions of RSA 100-C may retire. The judge shall give not less than 30 days' notice nor more than 90 days' notice of the judge's intention to retire to the chief justice of the supreme court or the administrative judge of the judge's court and to the governor and council and the board of trustees of the judicial retirement plan under RSA 100-C. If a chief justice wishes to retire, the chief justice shall give not less than 30 days' notice nor more than 90 days' notice of the chief justice's intention to retire to the senior associate justice of the chief justice's court and to the governor and council. If an administrative judge wishes to retire, the administrative judge shall give not less than 30 days' notice nor more than 90 days' notice of the administrative judge's intention to retire to the chief justice of the supreme court and to the governor and council and the board of trustees of the judicial retirement plan. Retirement shall be effective upon acceptance by the governor and council. The vacancy created by the retirement of a judge shall be filled according to law.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 61 ought to pass with amendment. Senate Bill 61 establishes a procedure for notice of intent to retire from the judicial service. The committee amendment specifies that the newly established Judicial Retirement Board created under RSA 100-C also receives notification of the intent to retire. The amended bill provides that the exact time that a judicial retirement becomes effective is when the Governor and Council accept it. A friendly floor amendment will be offered to clarify that no conflict

exists with the Judicial Retirement System. The Judiciary Committee recommends that this legislation be adopted as amended and also vote in favor of the friendly amendment which will follow and asks your support. Thank you.

Amendment adopted.

Senator Gatsas offered a floor amendment.

Sen. Gatsas, Dist. 16

March 30, 2005

2005-0969s

10/09

Floor Amendment to SB 61

Amend the title of the bill by replacing it with the following:

AN ACT relative to judges giving notice of intent to retire, and relative to retired status for judges and assignment of judicial referees.

Amend the bill by replacing all after section 1 with the following:

2 Chapter Title; Retired Judges. Amend the chapter title of RSA 493-A to read as follows:

RETIRED JUDGES; JUDICIAL REFEREES

3 Judges; Senior Active Status; Retired Status. RSA 493-A:1 is repealed and reenacted to read as follows:

493-A:1 Senior Active Status; Retired Status.

I. Any full-time justice of the supreme, superior, district, or probate court who retires from regular active service prior to age 70 pursuant to RSA 100-C, may elect to take either senior active status or retired status for the period prior to the time when the justice reaches age 70. A justice who desires to be designated on senior active status shall make such election by providing written notice to the chief justice or administrative justice of the court from which he or she retired. The first such election shall be made not later than 30 days prior to the date the justice's retirement becomes effective and shall be valid for one year from the date of the justice's retirement. Thereafter, a justice who desires to remain in senior active status shall provide a similar notice on an annual basis to the chief or administrative justice of the court from which the justice retired not later than 30 days prior to the anniversary date of the justice's retirement. Each election shall be valid for a period of one year, except that an election made for the year in which the justice reaches age 70 shall terminate on the day before the justice turns 70. A justice who desires to be designated on retired status may do so at any time following his or her retirement from regular active service by providing written notice of this election to the chief or administrative justice of the court from which the justice retired; provided, however, that once a justice elects to be designated on retired status such election shall be final and the justice shall not thereafter be allowed to return to senior active status.

II. A senior active justice shall have all the powers of a justice in regular active service and may serve on the court from which he or she retired or on any other court in which he or she is authorized by law to serve.

III. A justice who elects to be designated on senior active status shall not, during the period while such designation is in effect, engage in the practice of law, but such justice may serve as a teacher or professor of law at an educational institution.

4 New Section; Judicial Referees; Assignment. Amend RSA 493-A by inserting after section 1 the following new section:

493-A:1-a Judicial Referees.

I. Any full-time justice of the supreme, superior, district, or probate court who is mandatorily retired from either regular active service or senior active service upon reaching age 70, and any part-time district or probate court justice who is mandatorily retired upon reaching age 70, shall thereafter be eligible to serve as a judicial referee on the court from which he or she retired or on any other court in which his or her service as a referee is authorized by law.

II. A judicial referee may be assigned to take testimony, receive and review evidence, and make recommendations for findings of fact and conclusions of law in any court specified in paragraph I by the chief justice or the administrative justice of the court from which the referee retired. All recommendations of judicial referees shall be approved by a justice in regular active service or senior active service of the court to which the referee is assigned. A judicial referee shall not preside over jury trials and shall not enter final orders in any case.

III. Nothing in this section shall prevent a retired justice of the supreme, superior, district, or probate courts from sitting as a temporary justice of the supreme court when selected to do so pursuant to the procedures specified in RSA 490:3.

5 Repeal. RSA 491:23, relative to appointment of former judges as referees, auditors and masters, is repealed.

6 Application; Status of Judicial Retirement Plan. If any provision of this act is determined to affect the validity or status for federal tax purposes of the judicial retirement plan established under RSA 100-C, this act or the offending provision thereof shall be deemed null and void and shall be of no further force or effect.

7 Effective Date. This act shall take effect July 1, 2005.

2005-0969s

AMENDED ANALYSIS

This bill establishes a procedure for supreme, superior, district, probate, and administrative judges to give notice of intent to retire.

This bill also revises the procedure for assignment of judicial referees and establishes senior active status judges.

SENATOR GATSAS: Thank you. There should be a floor amendment coming before you. What the floor amendment does is it allows retired judges to come back and serve in senior status at no wage or per diem or expense. What it does is, in attempting to lighten the burden of the courts by using the retired judges to come back. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I would just like to add my comments. After speaking with the Chief Justice of the Superior Court, I want to add his grave concern over the need for him to be able to use these retired judges to keep the judicial system going. So I just add that to the mix, if you will. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Gatsas, judges have to retire at what age, 70, 72?

SENATOR GATSAS: No, the new legislation that was passed last year, Senator, allows them to retire at 65.

SENATOR BARNES: So no judge...these retired judges can't be over 65 then, that are going to come in and sit, because they'd be breaking the

law. Right? We can't have a judge sitting there a 65 year old coming in, retired judge coming in to sit if the Constitution says he's got to retire at 65. We already had that come up in a case a couple of years ago if you remember correctly.

SENATOR GATSAS: Senator, let me correct you. The old retirement system had judges retiring at age 70. By law they had to retire at age 70. The new legislation we passed last year, allows judges to retire at 65; allows them to go out and search whatever kind of work they want after that. What this amendment does is it allows them to come back and sit in the court at no cost.

SENATOR BARNES: I am not clear. A retired judge could come in and sit under this amendment of yours? He could be 80 years old and he could be sitting there. Is that correct?

SENATOR GATSAS: That is correct.

SENATOR BARNES: Wow. Thank you, Senator Gatsas.

SENATOR FOSTER: I also echo support for this amendment. I want to remind folks that last year we passed a piece of legislation to assist the Family Law Division which will be reducing the number of Superior Court judges from 29 to 22 over a period of time. So the need for this is even greater than it would have otherwise been. Thank you.

SENATOR BOYCE: I would just like to voice my concern that I felt all along that even though we have a statute that says that we can do this, I believe that the statute should have been found unconstitutional, however, I guess no judge is ever going to do that. Our Constitution very clearly says that no one may sit as a judge after the age of 70, having obtained the age of 70. The Constitution is very clear on that. It doesn't say that they get to be cherished in any way after they have become 70. It says that once they become 70 they cannot sit as a judge. Now I just heard several people say that these would be sitting as judges. I think that somebody who sits with a black robe, behind a bench, makes a ruling, acts like a judge, you know, quacks like a duck, is a duck, is a judge. He is after 70, unconstitutional. It is unconstitutional to allow judges to sit as judges after they reach the age of 70. Nor can they be sheriff. Those are two things that are written in the Constitution. They are just as rigid in our Constitution as is the prohibition on spending highway money on anything but highways, on paying us more than \$100 a year. There are several things that are in the Constitution, that are in the Constitution. They have words that actually mean things. They are spelled out in very clear language. NO JUDGE SHALL SIT AFTER THE AGE OF 70. After attaining the age of 70. I think that this whole thing should be repealed. We should not be doing this. If we don't have enough judges, we don't have enough judges. But we shouldn't be violating the Constitution in order to keep judges sitting after the age of 70. Thank you very much.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Burling rule #42 on SB 61.

SB 139, relative to admission into evidence of certain medical bills, reports, and records. Judiciary Committee. Ought to pass with amendment, Vote 4-2. Senator Clegg for the committee.

Senate Judiciary
March 23, 2005
2005-0895s
09/01

Amendment to SB 139

Amend the title of the bill by replacing it with the following:

AN ACT relative to admission into evidence of certain medical bills, reports, and records in civil cases.

Amend the bill by replacing section 1 with the following:

1 New Subdivision; Medical and Hospital Services; Evidence in Civil Cases. Amend RSA 516 by inserting after section 37 the following new subdivision:

Medical and Hospital Services; Evidence in Civil Cases

516:38 Medical and Hospital Services; Evidence in Civil Cases.

I. In any civil court or civil administrative action or proceeding, itemized bills and reports, including hospital medical records or any other medical records, relating to medical, dental, hospital services, prescriptions, or orthopedic appliances rendered to or prescribed for an injured person, or any report of any examination of such injured person, including, but not limited to hospital medical records or any other medical records subscribed and sworn to under the penalties of perjury by the physician, dentist, authorized agent of a hospital or health maintenance organization rendering such services or by the pharmacist or retailer of orthopedic appliances, shall, subject to the court's discretion, be admissible as evidence of:

(a) The fair and reasonable charge for such services or the necessity of such services or treatments;

(b) The diagnosis and prognosis of the physician or dentist;

(c) The opinion of such physician or dentist as to the proximate cause of the diagnosed condition; and

(d) The opinion of such physician or dentist as to disability or incapacity, if any, proximately resulting from the diagnosed condition.

II. Written notice of the intention to offer a bill, hospital medical record or any other medical record, or report as evidence, together with a copy of the bill, hospital medical record or other medical record, or report, shall be given to the opposing party or parties, or to their attorneys, by certified mail, return receipt requested, not less than 30 days before the introduction of the bill, hospital medical record or other medical record, or report into evidence, and an affidavit of such notice and the return receipt shall be filed with the clerk of the court or with the administrative agency after the receipt is returned.

III. Nothing contained in this section shall be construed to limit the right of any party to the action to summon, at his or her own expense, such physician, dentist, pharmacist, retailer of orthopedic appliances, or agent of such hospital or health maintenance organization or the records of such hospital or health maintenance organization for the purpose of cross examination with respect to such bill, record, or report or to rebut the contents thereof, or for any other purpose, nor to limit the right of any party to the action or proceeding to summon any other person to testify in respect to such bill, record, or report or for any other purpose.

IV. In this section:

(a) "Physician" and "dentist" shall include any person who is licensed to practice as such under the laws of the jurisdiction within which services were rendered, and shall also include chiroprodists, chiroprac-

tors, optometrists, osteopaths, physical therapists, podiatrists, psychologists, and other medical personnel licensed to practice under the laws of the jurisdiction within which services were rendered.

(b) "Hospital" means any hospital licensed under RSA 151:2, or licensed or regulated by the laws of any other state, or by the laws and regulations of the United States of America, including hospitals of the Veterans Administration or similar type institutions, whether incorporated or not.

(c) "Health maintenance organization" shall have the same meaning as defined in RSA 151-C:2.

2005-0895s

AMENDED ANALYSIS

This bill establishes criteria for admission into evidence of certain medical bills, reports, and records in civil cases.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 139 ought to pass with amendment. The bill deals with admission into evidence of certain medical bills, reports and records in civil cases. The bill was introduced in an attempt to remove one issue with medical evidence in trials. Under the provisions of this legislation, thirty days prior to the trial date, the party who wants to introduce a medical report, record or bill, would notify the other side. The opposing party would then have the opportunity to either depose the doctor or provider or to have him or her appear personally at trial so that they can be cross-examined. If there is no objection, the medical report, record or bill would be entered into evidence at the trial. This process would be especially advantageous in small trials where paying thousands of dollars for a physician to appear is prohibitively expensive. The Judiciary Committee recommends that this legislation be adopted as amended and asks for your support. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I brought this bill forward after I spoke with several different folks. Some defense lawyers who represent doctors, some doctors and some lawyers, because I think that we have to start somewhere in trying to solve some of the problems that are common to them all. This is a duplication of a statute that is in effect in neighbor states, which has been in effect for a long time and has been useful, mostly in smaller cases where the need to bring a doctor out of the office is inconvenient for the doctor, expensive for the patient, who is also a client of the attorney who is bringing a case. We have heard, and I would like you all to think for a moment, if you can just divide the comments that you have received from the folks who have sent you these letters, that you, I'm sure have read, because many of the comments from the prior bill I just talked about are in there. I would like you to separate this bill for a moment and think to yourself how can we possibly reduce the cost of proving cases that helps us all? The doctors tell me they don't want to have to go to court because they don't want to give up the time when they are in their office. They have requirements to bill and bill and bill and see our patients. They have no time to write reports, but they do it anyway. And they have less time to come to court to appear. If we have a case that we have to bring to court as a plaintiff's attorney, you have to pay for the doctor's time, you have to pay for the stenographer's time, you have to pay for the videographer's time, on an average of \$3,000 to \$5,000 per case. Some people might say this is all about justice, we want these doctors to be in front of a jury either by video tape or we want them to be in front of a jury in person.

They don't want to be there. They don't want to participate in the system, especially your primary care doctors. They want to be left to practice medicine. The idea of this bill is to try to bring forth a system where, in some cases, not all cases, and I promise you, in medical malpractice cases, this will rarely happen. Because anyone who decided they were going to prove a medical malpractice case based on a paper report would probably themselves be guilty of malpractice. So if you consider a small auto accident case that maybe has medical bills of \$2,000 or \$3,000. That case is difficult to bring to a trial because it is too expensive to bring to trial. All the insurance industry knows that. They know that, if they offer you \$2,000, you have to decide whether you are going to take that case as a settlement or whether you're going to go to court, meaning you have to pay \$3,000 or \$5,000 to get a doctor to appear before the court. It makes no sense. The last part of the story is, in the event that you actually go to court and win a verdict before the court, that money that has been paid for that doctor, becomes a taxation of costs that gets paid by the insurance company who represents the defendant in the case. So, what have we done? We have upped the ante across the board by \$3,000 to \$5,000 on a small case. Now all of us have to pay for that and the doctor has to come out of the office. That is not what we want to do. This is something that was vetted in our hearing and the most important three aspects that we have in this bill. Number one, we already are able to use medical bills and medical records in court, but this codifies it. The concern that was voiced at the hearing, the only concern about that was, how do we know that all those records aren't going to come in and they won't be cleansed? Well what happens is, they go before a judge if anybody has any questions because both sides look at these records and there is a motion, it is call a motion in limine to restrict what is admitted into evidence. So that is covered. In order to address that, on line 18 of the amendment, it says that "these records will be admitted", "shall, subject to the court's discretion." That's the language that we put in. So the court does have discretion to look at these things. I want you to be aware that the criminal lawyers weighed in on this. They did not want this applied to criminal cases. So, on line 12, we put in "in any civil court or civil administrative hearing." And at the end, the amendment on line 30, went from "ten days" which was under our neighboring state's law, to "30 days." Now the comment is that this shifts the burden from the plaintiff to the defendant. But what it does do is level the playing field for everybody, because not only the plaintiff can use this, but the defendant can use this. So if the defendant wants to file a medical report and have the plaintiff take a deposition of the other doctor, they can do it as well. I can assure you they have plenty of resources to put in reports on cases of small magnitude that will be convincing to a jury. So the idea is, in these cases where it is not necessary to bring these doctors in and we can try to have some semblance of sworn testimony. I might remind you that the provision provides that these will be provided, sworn to the penalties of perjury, by these doctors. I can tell you, they would rather do that then come to court. I am open to questions. I am sure you have many. Thank you, Mr. President.

SENATOR BARNES: I don't think it will be many, Senator, it is just one. Could you tell us, would you believe I would like to know who gave testimony against this piece of legislation? Who they were, who they represented?

SENATOR GOTTESMAN: I can tell you there was only one group that came and testified against the bill. I believe it was the Medical Society. Let me get that for you. Yes, it was Martin Honigberg representing the New Hampshire Medical Association. I am glad that you reminded me because, when the issue came up, he indicated that he had certain concerns and he said... "Attorney Honigberg responded that as the bill is currently written, all documents are included." Then he went on to say, "If it was limited to reports, it would be more palatable to the doctors." So he didn't have any real problem with it. I can tell you that when he came and testified, he was asked if he was familiar with the statute in our neighboring state, to which he said "Yes". He was asked if he knew of any problems with this statute in the neighboring state, to which he said, "No". So that was pretty much the sum and substance of his testimony.

SENATOR BARNES: Senator, thank you very much.

SENATOR GOTTESMAN: Thank you.

SENATOR JOHNSON: Senator, are you aware of the testimony that we received from a couple of the hospitals, the Dartmouth Hitchcock and also the Lakes Region General Hospital? Would you care to rebut some of their concerns?

SENATOR GOTTESMAN: Sure. I have received a letter which I think was addressed to Gina Balkus at Dartmouth Hitchcock, which came from the law firm of Orr and Reno, which I may say represents many medical malpractice defendants. Their concern was that this presents some sort of rebuttal presumption in the case. Anything that comes in as evidence in a case is just that, it's evidence. The judge has control of the instructions in the case and tells the jury how they are supposed to weigh the evidence. The burden of proof in bringing a case forward is upon the plaintiff. If the plaintiff does not satisfy that burden, then the case fails and the defendant wins. Once the plaintiff comes forward and satisfies the burden, then the burden shifts over to the defendant. They have the same rights under this bill to go forward. One of the other issues that they had was this ten-day notice that I mentioned earlier, Senator Johnson, which I changed to thirty days. I think that people have to understand the way these cases work. They are on a schedule that is monitored by the court and, at certain points in time, people get a feeling of how they are going to proceed with the case. When they proceed with the case, they know whether they are going to bring a live doctor or whether they are going to have a video taped deposition. In this case, it would give them an option to have a medical report. Now again, Senator Johnson, this is not going to happen in all cases, but it is going to happen in cases where there are, in my mind, either many doctors in a case, some who treat more serious parts of the case. So if a person had let's say ten different injuries and one of them was they went to an eye doctor for two weeks, and one of them was that they went to a foot doctor for a few weeks, and those reports had to come in, then they would only have to come in as reports. Even though the medical records would already be admitted, the reports would come in which say, "It is my opinion, more probable than not, that this accident caused this particular injury." And we don't have to bring the doctor out of the office to do that.

SENATOR FLANDERS: Thank you, Mr. President. Senator Gottesman, I heard you testify that the criminal cases have been taken out?

SENATOR GOTTESMAN: Yes, that is correct. That is correct.

SENATOR FLANDERS: I am reading from the hearing report and there was Attorney Honigberg said he felt it would be better if, in smaller cases in fact, a dollar limit was placed on this, it would be much easier for the doctors. Did you give consideration to putting a dollar amount on it?

SENATOR GOTTESMAN: Yes. It was mentioned and we considered it, but it was not something that we felt was necessary. I can tell you this, there have been cases where low dollar special...I would call them "special damages." Hospital bills, lost wages, that have come back in excess of everybody's opinion in the courtroom because a jury feels that a case has a certain value. Not that the case as negotiated by a good plaintiff's attorney and a good defense attorney, backed by an insurance adjuster, feel that the case is worth, but a jury may feel that a case is worth much more. So the idea is to put before them, in some cases, a form of evidence that can be helpful to them, but not inconvenience the doctor for coming in to have to do this. I tell you, this is on a current basis that doctors, more and more, do not want to be involved in the process. If you even call doctors who happen to treat the patient, they will tell you, "I am a treating doctor, I am not an expert witness." The only difference is **TAPE CHANGE** we will pay the bill because the verdict will be for the defendant and they will have to pay the expenses.

SENATOR FLANDERS: In every case that will happen?

SENATOR GOTTESMAN: Not every case. I wish it would, but it doesn't.

SENATOR FLANDERS: Thank you.

SENATOR GREEN: Thank you, Mr. President. I was one of those in committee who voted against this particular bill. I spoke against it briefly on the basis that I felt strongly that the burden was shifted and that the jury was the arbitrator of this and I think the jury should hear from the medical expert and not be thinking that they are going to put as much weight in just the written documentation. These cases tend to be, especially the big cases, tend to be very complex. I don't think a jury member, and I don't know how many of you have served on a jury, I have had that pleasure, really needs to understand the scope of the issue that's before them. I don't believe they are going to get that scope from reading documents. They need to hear and hear from the person, look at them and decide whether they are a creditable witness and whether they believe him or not. I don't think you can get that same impact from a packet of documents. Let me just say that the basic three areas that the Medical Association raised, was the burden was shifted, I happen to agree with them, from plaintiff to defense. And I happen to believe in the old theory that "you are innocent until proven guilty." That's the shift that I think takes place that bothers me. I think a lot of that is going on in society by the way. People are proven guilty before they even are being presented. The media has done a good job of doing some of that. The jury role, I think, is critical in these decision. I think that anytime you take away the ability of the jury to make a decision based on what they see as people in front of them, and make a judgment about creditability, is critical. And then the question on limitations on dollars. That was in the hearing. I was not at the hearing, just so you know. I was absent from the hearing, but I did get the opportunity to hear the arguments outside the hearing room as well as from looking at some material. So I guess that, if the argument is that the burden is too heavy financially on small cases, I think there is probably an argument there. I mean, I don't think the little guy is going to get hurt if we allow a dollar limit here, but based on the way this bill is now written,

there is no such limit, so everything is allowed to come in as records as opposed to testimony. The doctors that I have spoken to, and I took it upon myself to start calling some doctors, and said, the argument is that you don't want to be there. They were basically saying to me, "We will be there if the case is large enough." It's the small cases that they are saying to me. And the question is, how many of these are small cases which is part of the good Senator from Nashua's position. I don't know the number of small cases versus large cases. I have no idea. But I do think it does change the playing field and I do think that the legislation, if it was worked on further, maybe had some merit, but in its current form, I would not support it. Thank you.

SENATOR FOSTER: Thank you, Mr. President. Many of you got letters on Senate Bill 47 and Senate Bill 139 at the same time. Somehow the people who are writing these letters are tying these bills together. I would ask you to separate them. I didn't speak on Senate Bill 47 because I was in the minority in my committee. I thought it was a bad idea and I guess most of you agreed with me, but I didn't speak on that. But Senate Bill 139 I think, is a good idea. Senator Gottesman gave you a lot of the reasons, but you have to sit back and think of it in a more simple way. Large case, small case. Nobody, I think, is going to use this piece of legislation in a larger case, because you always want a witness who is on your side in court. Of course you do. They agree with you. You want to hear them. If somebody tries to sneak in an adverse witness, somebody who really doesn't support them, this bill allows the other side, plaintiff or defendant, to call that witness. It doesn't prohibit the jury from seeing him. It only prohibits...it doesn't prohibit the jury from ever seeing him. The only way the jury doesn't see him if neither side calls that witness. So the jury gets a chance to hear from that person if either side thinks it is a good idea. If they don't, the money is saved for everybody in the process. Keep in mind, I think Senator Gottesman mentioned that. These records are sworn to. They are not just...they're not...you don't go to the hospital and copy them and submit them in. They've got to be sworn to by somebody. Somebody has to authenticate them. So this is a way of making things a little bit more efficient. I think it will be naturally used in smaller cases. And, by the way, I think that it will almost never be used in a medical malpractice case. Those tend to be larger cases and in those cases, people are going to call the live witnesses there. The plaintiff is going to want to do that. It is already decided to make an investment when it takes that kind of a case. And this will be a smaller burden. But you know, on the physicians...I asked around, too. I asked one of the lawyers in my office. As I was trying to make up mind, I said, "Doctors ought to love this bill". Why? Because they don't want to leave their practice to come in to give testimony, which is obvious from medical records or a medical report when nothing is in dispute. But without this they have to show up. So what do they do? I don't think Senator Gottesman mentioned this. They charge a lot of money. Why? To try to get out of coming. Not because they don't want to be helpful, but it burdens their business. They don't want to be there. So I think this bill is a way to make litigation more efficient. It doesn't stop the jury from hearing people at all, if either side wants to bring him there. It doesn't turn the system upside down and I would ask your support. Thank you.

SENATOR FLANDERS: Thank you. My concern, having spent some time with medical reports, what I think that we are doing here today, and obviously have a right to disagree, but I think what is happening is we

are going to have a medical report that will be presented by attorneys. And the whole thing is going to boil down to which attorney presents the best case because someone's going to have to interpret that medical report, especially if it's a jury. Because I can guarantee you, I can bring in a medical report and hand it out to the 24 people here, and if four of you understood it, I would be surprised. So my concern is, if you have a case, the jury should hear...I agree with Senator Green, the jury should hear the doctor, because you are going to have a doctor on both sides. You're not going to have one doctor. You're going to have a doctor on both sides. And the jury should be able to not look at a piece of paper and decide what this doctor is testifying to, I think they should be able to see the doctor. Thank you.

SENATOR GOTTESMAN: Thank you. Senator Flanders, are you aware that before a doctor normally testifies that a defense attorney normally takes a deposition of the doctor?

SENATOR FLANDERS: That's right. I have been to several of them. Yes.

SENATOR GOTTESMAN: And when that happens, that is paid for by the defense attorney through the insurance company. That is an expense of the insurance company.

SENATOR FLANDERS: I don't understand that. No.

SENATOR GOTTESMAN: You don't know that? So let me help you with that. When a person takes a deposition of an opposing doctor, the person taking the deposition has to pay for it. They have to pay for the doctor, they have to pay for the stenographer. So if we could do that in response to a medical report that is filed, then we wouldn't be spending any more money, would we? Because then, the defense attorney would only have to take one deposition at the time in response to the report. Isn't that correct?

SENATOR FLANDERS: Of one doctor, yes. But if you had a doctor with an opposing view, you'd be taking two. Thank you.

SENATOR FOSTER: Senator Flanders, I agree with you that medical reports are confusing. I had the good fortune when I was a very young lawyer and trying to read through medical records and decided that I didn't want to do it anymore, so I don't anymore. But, again, and I wonder if you agree with me. If anybody thinks the report is confusing, they can call the doctor on either side, right? Nobody is saying in this piece of legislation that we have to go by reports. If either side wants the doctor there, they're there. Isn't that the way this works? Do you agree with that, because that is how I understand the piece of legislation.

SENATOR FLANDERS: That is one of my problems. Where in the legislation does it say both parties? How does it read that both parties have to agree?

SENATOR FOSTER: It says III, "nothing contained in this section shall be construed to limit the right of any party to the action to summon at his or her own expense, such physician, dentist, pharmacist" so on and so forth. So what happens, as I understand the piece of legislation, and you can...I am going to ask this as a question or try to make it as a question. I have a report, I give you notice I'm going to submit it, and if the other attorney decides this is too confusing, I think that doctor has to be there. It is going to be misconstrued. They can be called. Don't you agree that that's what that is suggesting?

SENATOR FLANDERS: I hope that's what it is. I hope that's what it is because now my understanding of this is once you submit that one medical report to me, that I am going to submit one back to you because if you are not going to send it to me if it's going to hurt you, so I am going to have a doctor send one back to you and we go in, and somebody has to decide which one of those doctors is correct. Video depositions, I think, are fine. We were doing an awful lot of those at one point, then they faded away. I think video depositions are great. I don't know why we are not using more of them now.

SENATOR FOSTER: If that was a question, I will try to answer. Which is yes, you could send that report back to me, and if I thought that report was confusing or inaccurate, I could call your expert.

SENATOR FLANDERS: Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. Senator Flanders, I'll use an example. I have a constituent that was sent...who is disabled, and the company that she pays the insurance to, decided that all of a sudden they were going to discontinue her benefits and send her to a doctor which they wanted, that worked for them. Are you saying or did I mishear, that there would be no...that neither doctor in this case could make opposite opinions? That if her doctors says she is totally disabled because of this, this, this and this. The doctor that works for the insurance company would not come back and say well no, this doctor doesn't know what he is talking about or she doesn't know what she is talking about. Is that what we are referring to here?

SENATOR FLANDERS: What you just said. That is very apt to happen.

SENATOR MARTEL: If we pass this legislation?

SENATOR FLANDERS: Very apt to happen.

SENATOR MARTEL: Alright. Thank you.

SENATOR CLEGG: Thank you, Mr. President. To try to avoid some maybes...exactly what is the square root of minus one? I have heard some people are confused. They think that just because we are going to allow the docs to send in reports instead of showing up, that something different is going to happen in court. If, as Senator Martel gave an example of two different doctors with two different reports, I am positive that one of those lawyers is going to decide to bring the doctors in as witnesses so they can cross examine them, because obviously to argue reports. With all due respect to my colleagues who are lawyers, lawyers are paid to confuse the issue in court anyways. I mean, that is why we pay them to come in. So whether we have the doctor or the report, nothing changes other than the fact that, on the small cases, a doctor doesn't have to waste his time. It's obvious the injury was caused by a certain thing. He sends the report in and we are done with it. So it is efficiency. Believe me, if a doctor's on the hook for big money, he's going to show up anyway. Thank you, Mr. President.

SENATOR HASSAN: With hopes that this attorney might add clarity instead of....I don't know. That's a big order. I will just say that somebody who practices in both Massachusetts and New Hampshire, I have seen this type of system work to the delight of physicians, many of whom I have represented in Massachusetts, for the exact reason that Senator Clegg just pointed out. There are, believe it or not, cases in which the medical injury is not the big dispute, but you still, as a matter of law, must prove injury and causation, and those are usually not the disputes

in a number of cases. And the medical reports will present that to a jury. If there is a slight difference of opinion about causation they will do that. If the lawyers think that either report hurts the other side, they just call the doctor. But, for primary care physicians, this is a huge time saver. It is a time saver for juries and for courts. It adds to efficiency and I think there is so much heat right now on other disputes concerning the medical malpractice system that we have, that we are confusing issues. So I would urge people to support this legislation.

SENATOR JOHNSON: Senator Hassan, would you believe that I get a little nervous when I hear about Massachusetts law?

SENATOR HASSAN: And, Senator Johnson, would you believe I prefer practicing in New Hampshire, but I am the granddaughter of a physician who practiced medicine in Massachusetts for sixty years. The thing he hated the most before Massachusetts adopted this system was the presentation at his office of a lawyer saying you have to come to court and waste your day, half a day, sitting around court waiting to be called as a witness when he had patients to treat. I think this goes to solving that problem. I just think it is a good bill. Thank you.

SENATOR JOHNSON: Thank you.

SENATOR BARNES: Thank you. Senator Gottesman, we are talking about wasting the time of the doctors. Well you know, we have a police department in Raymond that wastes an awful lot of time with our officers in court so can we put an amendment on here so my police officers don't have to go to court and cost the taxpayers of Raymond a heck of a lot of money that is wasted sitting in a courtroom waiting for a judge to come in? I don't think it is just doctors. I think that there are a lot of other people that have the same problem. Would you believe?

SENATOR GOTTESMAN: I would believe.

SENATOR BARNES: So how do we take care of it?

SENATOR GOTTESMAN: I think that would be for another day, but I think it is a healthy discussion so that we don't have to have people paying overtime to have police officers sitting around the courtroom unnecessarily.

SENATOR BARNES: Would you cosponsor that with me in January?

SENATOR GOTTESMAN: I will consider it.

SENATOR BARNES: You will consider it. If I may, I will consider, maybe I will vote for this and maybe I won't. Thank you.

SENATOR GOTTESMAN: Well I know you will do the right thing, Senator Barnes.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Johnson.

Seconded by Senator Barnes.

The following Senators voted Yes: Burling, Eaton, Gottesman, Foster, Clegg, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Bragdon, Barnes, Martel, Morse.

Yeas: 11 - Nays: 12

Amendment failed.

Senator Letourneau is excused.

The question is on the motion of ought to pass.

Motion failed.

Senator Bragdon moved inexpedient to legislate.

Adopted.

SB 139 is inexpedient to legislate.

SB 167, relative to extension of guardianship. Judiciary Committee. Ought to pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 167 ought to pass. Senate Bill 167 extends the timeframe for the Probate Court to act on an extension of a guardianship petition. The bill was at the request of the Supreme Court in response to the LBA audit. While this issue comes up fairly rarely, the Probate Court does not want to even appear to not being consistent with current statute. The audit remark was prompted by the thirty day requirement for action on petitions filed in the court. Generally, the thirty day time frame is kicked off by the date on the order of notice. The Judiciary Committee recommends that this legislation be adopted and asks your support.

Adopted.

Ordered to third reading.

SB 168, relative to administration of estates. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Gottesman for the committee.

Senate Judiciary

March 23, 2005

2005-0899s

09/10

Amendment to SB 168

Amend the bill by inserting after section 7 the following and renumbering the original sections 8-10 to read as 9-11, respectively:

8 Property Not to be Sold. Amend RSA 554:9 to read as follows:

554:9 Property Not to be Sold.

I. Personal property specifically bequeathed shall not be sold, if not needed for the payment of debts; and any property may be reserved at the sale, unless so needed, for the benefit or upon the request of the heirs or legatees, and the administrator shall be discharged by delivery thereof to the persons entitled thereto.

II. At any time after the appointment of the administrator, without petition to the court, a single motor vehicle registered in this state in the decedent's name, if used for family purposes, may be transferred by the administrator to a legatee or heir, if not needed for the payment of debts.

SENATOR GOTTESMAN: Thank you, Mr. President. I move Senate Bill 168 ought to pass with amendment. Senate Bill 168 changes bonding and certain other requirements for the administration of estates. Currently, there are two levels of estate administration - regular estates and small estates, those under \$10,000 in value. The bill changes the amount for a small estate from \$10,000 to those under \$25,000, which is far more realistic in a time when a used car can easily be valued over \$10,000. Furthermore, the bill allows for only one type of estate but permits the Probate Court to allow exceptions. For estates in value under \$25,000,

there would be no requirement for a surety bond and no requirement for costly newspaper notices. In all estates, the administrator would be required to notify persons who had an interest in the estate, just as they must do now. Testimony received at the hearing discussed the difficulty many individuals have in following the current process. The new procedures and language proposed in this bill make it simpler for all to understand. The committee amendment provides for an automobile registered in the deceased's name to be used by a surviving spouse if so needed for the family and not required for the payment of the debt. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support. I just want to add one thing if I may. I think this skipped over the fact that right now a person can take a car that's in the name of the decedent and move it over to the spouse. The bill provides that it also may go to a family member. I thought that was an important change. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 185, relative to the possibility of reverter. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move Senate Bill 185 inexpedient to legislate. Senate Bill 185, if enacted, would have required that reverter clauses appearing in deeds disappear after a period of forty years. The difficulty with enacting this provision would be that, prior to zoning regulations, reverter clauses were used in order to protect the future use of a land and/or buildings. Many cities have, for example, recreational facilities and other facilities that are protected because of reverter clauses. The committee also was concerned about the possibility of a constitutional question by interfering with the right to parties to enter into contracts. Generally laws are prospective and mark a point from thence forward where something would be in effect. This bill unfortunately changed reverter clauses on a retroactive basis. We appreciate the concerns articulated by the sponsor, but there is a court system already in place that can be used to remove reverter clauses. Therefore, the Judiciary Committee recommends that this legislation not be adopted and asks for your support. Thank you.

Committee report of inexpedient to legislate is adopted.

MOTION TO REMOVE FROM THE TABLE

Senator Martel moved to have SB 143 removed from the table.

Adopted.

SB 143, relative to the adoption and use of impact fees for public open space. Public and Municipal Affairs Committee.

SENATOR MARTEL: I would like to speak that we pass the...have an ought to pass motion on this bill with a new amendment, which is being passed out now. The difference between...may I speak to my amendment?

SENATOR EATON (In the Chair): You may speak to the amendment.

SENATOR MARTEL: The difference between the amendment that you are getting versus the amendment with the bill that we had last time we heard this bill...

SENATOR EATON (In the Chair): Senator, I have to correct myself. We have a committee amendment, which we would have to accept before we could take another amendment.

SENATOR MARTEL: Oh, I wasn't aware that we did have a committee amendment.

SENATOR EATON (In the Chair): We can accept or dispose of.

SENATOR MARTEL: I didn't realize that we had a committee amendment.

SENATOR EATON (In the Chair): It's ought to pass as amended. So the first order of business is the committee amendment. So if you wish to speak to that and the change in it, and then, once we take care of that amendment, you can speak to the new amendment.

SENATOR MARTEL: I am asking to overturn that amendment, correct? I'd have to ask for an overturning of that amendment, Mr. President?

SENATOR EATON (In the Chair): If you don't want that amendment on there and wish to have a new one, yes.

SENATOR MARTEL: Okay. Mr. President, what it is, is that in the committee amendment, which is the old bill, refers to zoning ordinances that in a case that allows the assessment of an impact fee for public open space, shall be adopted by an affirmative vote of 60 percent of the legal voters present and voting. So it is specifically for town meetings, Mr. President, when this would be going into effect, according to the old legislation. Now I can't speak about the new amendment until I ask for this to be overturned. The difference between the two, the bill and this amendment, is simply that, instead of having the 60 percent of all the legal voters who are present and voting, it is actually 60 percent of the... This is the old amendment, Mr. President. This is a bill, not the amendment. This bill actually speaks to what I just said. I will hold on until we find it. It's in the journal? I urge that we accept the committee amendment, Mr. President, okay, so that we can bring the new amendment to correct the mistake in it. I would urge that vote.

The question is on the adoption of the committee amendment (0694).

Amendment adopted.

Senator Martel offered a floor amendment.

Sen. Martel, Dist. 18

March 31, 2005

2005-0982s

06/01

Floor Amendment to SB 143

Amend RSA 675:2, I-a as inserted by section 3 of the bill by replacing it with the following:

I-a. A zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of all the members of the legislative body, authorized to establish or amend a zoning ordinance, present and voting.

2005-0982s**AMENDED ANALYSIS**

This bill allows a city or town to adopt a zoning ordinance, or an amendment to a zoning ordinance, that includes impact fees for public open space if the ordinance or amendment receives an affirmative vote of 60 percent of the legislative body authorized to adopt it. The bill also establishes maximum impact fees and reduces the maximum impact fee by $\frac{1}{2}$ for developments that include workforce housing units.

SENATOR MARTEL: Thank you, Mr. President. Yes, I do and here it comes. I have amendment number 0982s and I move this ought to pass as it corrects the other bill and amendment we had tacked on it. All it does is changes the terminology of "a zoning ordinance, or amendment to a zoning ordinance, that allows the assessment of impact fees for public open space shall be adopted by an affirmative vote of 60 percent of all members of the legislative body, in that location, authorized to establish or amend zoning ordinances present and voting." So it leaves it in the hands of the legislative body which is hearing it. So that is the only change between the two bills. So I urge the ought to pass on this amendment and I will sit down and we will finish the day.

SENATOR KENNEY: Thank you, Mr. President. Senator Martel, I am just looking at the Journal, 181. I am wondering what the difference from the floor amendment is to what was in the Senate Journal on page 181? Is it just a comma or?

SENATOR MARTEL: No, it talks about all of those present who are legal voters on page 181. Sixty percent of the legal voters present and voting. What the amendment does is it takes out the legal voters and brings in the authorized legislative body in that particular area.

SENATOR KENNEY: Thank you.

SENATOR BARNES: Thank you. I am going to ask a question of Senator Martel and I am going to ask you to defer to Senator Clegg if you would.

SENATOR MARTEL: Okay. I will. Thank you very much.

SENATOR BARNES: Senator Clegg, this takes care of Senate Bill 2 towns as well as the conventional towns and the charter towns and cities and everything else that God created under our great state?

SENATOR CLEGG: The entire bill does. The floor amendment takes care of a section that Senator Gatsas found last week that said...it addressed the cities. This addresses the cities in the amendment now so that everyone is covered. Senate Bill 2 towns, regular towns, cities and that form of government.

SENATOR BARNES: A great piece of legislation, Senator.

SENATOR CLEGG: It is. You did very well.

SENATOR BARNES: Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 213, authorizing the department of environmental services to adopt rules from the California Air Resources Board. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Mr. President, I hope this one goes a lot easier than the last one. Thank you, Mr. President. I move Senate Bill 213 inexpedient to legislate. This bill authorizes the Department of Environmental Services to adopt rules from the California Air Resources Board. While the committee realizes the commendable intentions of the sponsor, we feel that the federal standards that New Hampshire complies with now are sufficiently close to the California standards. The Transportation and Interstate Cooperation Committee asks your support for the motion of inexpedient to legislate and I thank you very much.

Committee report of inexpedient to legislate is adopted.

SB 221, relative to identification requirements for obtaining a driver's license. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move ought to pass on Senate Bill 221 and I ask the chamber's patience as I attempt to perform an in limine turn on this bill. This bill was originally brought by me in an effort to get some clarity to what degree of identification might be produced by a citizen of the United States attempting to get a New Hampshire driver's license. The case arose out of a series of utterly disgraceful behaviors committed on people who were trying to get drivers' licenses while moving to New Hampshire from other states. Most of these people, constituents of mine, showed up with an American passport and were told that wasn't good enough. I originally filed a little bill that simply said an American citizen seeking a New Hampshire passport could...a New Hampshire driver's license could show up with a passport and that would be sufficient. In the course of drafting this bill, it became apparent that there was not current statutory authority at all allowing the Department of Safety to demand identification from a person requesting a driver's license. I thought I had it right. It is now clear to me from the comments that several of you have made to me, that this question is far from resolved. It is also clear to me that the U.S. government is about to pass some legislation. So, Mr. President, if you could help me through this. What I really want to do is send this back to committee to do it right, 'cause the job is not done.

SENATOR EATON (In the Chair): Then you would have to recommit for next year. We don't have time to send it back to committee. Re-refer, excuse me. You would have to defeat ought to pass and then make a motion of re-refer to committee.

SENATOR BURLING: I would ask you then my colleagues, to defeat the motion of ought to pass, then join me in re-referring this bill to committee. There are lots of indications that there is confusion in the Department of Safety about whether they like this, need it, hate it, or can't live without it. I just believe it is in all our interest to get it right before we pass it. So I would ask you please to vote down the ought to pass. It is my bill.

SENATOR KENNEY: Senator Burling, in the discussion at the hearing, was there anything that came up in regard to green cards? I ask that because my wife is going for her citizenship on June 6th. It is an exciting point in our life, for her to become an American citizen because it is

two days before the birth of our child, but that's another issue for somewhere else. But my question is, are we looking at green cards as identification to possibly acquire a license in this kind of an exploratory phase that we are in?

SENATOR BURLING: Senator, you put your hand right on the problem area for me. It is the interface between identification for resident/non-citizens and citizens. I don't know is the answer. In fact, the deeper I get into this issue, the more confused I get about what it is that Safety is actually doing, and what the guiding principles are here. I thought it was a simple issue of here's what we ought to do for American citizens if you show up with a passport you're in. But it is much more profound than that.

SENATOR BOYCE: Senator Burling, this is maybe a would you believe. Last fall, my daughter had a sorority sister who was down on her luck, living with her. It was a temporary situation that kept on getting extended. It started almost a year ago. She moved from Boston to Alton. She wanted to be able to vote here.

SENATOR BURLING: Sounds like a bright young lady.

SENATOR BOYCE: But she still had her Massachusetts driver's license, license plates, because she kept thinking she was going to move back to Boston. Finally, about mid-October she decided she was probably not going to be moving back there, decided to get her license changed and everything. She went to get her driver's license change and was told that her Massachusetts driver's license was not sufficient identification to prove that she was in fact who she was, in order to get a New Hampshire driver's license. I was wondering if that came up in the committee. Is that one of the things that you now decided needs to be addressed?

SENATOR BURLING: Thank you. Absolutely. I mean, it is not only incomprehensibly confusing; it is regionally different. Depending upon the mood of any particular DMV person on any particular day, people are either told they're fine or they're thrown out of the office. So more work needs to be done, and I'm sure the committee will undertake to do that work.

SENATOR BOYCE: Thank you.

Motion failed.

Senator Burling moved to re-refer.

Adopted.

SB 221 is re-referred to the Transportation and Interstate Cooperation Committee.

SB 226, relative to the regulation of snowmobiles and off highway recreational vehicles. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 4-0. Senator Flanders for the committee.

Transportation and Interstate Cooperation

March 23, 2005

2005-0878s

10/04

Amendment to SB 226

Amend RSA 215-C:11, III as inserted by section 1 of the bill by replacing it with the following:

III. Upon complaint, information, indictment or trial of any person charged with a violation of this section, the court may admit evidence

obtained under RSA 215-C:12 of the amount of drugs in the defendant's blood or the defendant's alcohol concentration as defined in RSA 259:3-b at the time alleged, as shown by chemical, infrared molecular absorption or gas chromatograph test or tests of his or her breath, urine, or blood.

Amend RSA 215-C:27, I as inserted by section 1 of the bill by replacing it with the following:

I. If a person refuses a test as provided in RSA 215-C:13 or submits to a test described in RSA 215-C:12 which discloses an alcohol concentration of 0.08 or more or, in the case of a person under the age of 21, 0.02 or more, such person shall be subject to an administrative license suspension as described in RSA 265:91-a. The law enforcement officer shall conform to the requirements of RSA 265:91-a provided, however, that the law enforcement officer shall have reasonable grounds to believe the arrested person had been driving, operating, or attempting to operate or was in actual physical control of a snowmobile while under the influence of intoxicating liquor or controlled drugs or while the arrested person has an alcohol concentration of 0.08 or more or, in the case of a person under the age of 21, 0.02 or more.

Amend RSA 215-C:27, III (b)(1) and (2) as inserted by section 1 of the bill by replacing it with the following:

(1) Six months if there is no prior refusal under RSA 265:92, RSA 215-C:13, or RSA 215-A:11-b, no prior driving while intoxicated or aggravated driving while intoxicated convictions, and no prior administrative license suspension pursuant to RSA 265:91-a, RSA 215-A:11-q, or RSA 215-C:27.

(2) Two years if there is a prior refusal under RSA 265:92, RSA 215-A:11-b, or RSA 215-C:13, or a prior driving while intoxicated or aggravated driving while intoxicated conviction, or a prior administrative suspension pursuant to RSA 265:91-a, RSA 215-A:11-q, or this section. If a license or driving privilege has been suspended under RSA 265:91-a, RSA 215-A:11-q, or this section and the person is also convicted on criminal charges arising out of the same event, both the suspension and court ordered revocation shall be imposed pursuant to RSA 265:91-c.

Amend the introductory paragraph of RSA 215-C:39, VI as inserted by section 1 of the bill by replacing it with the following:

VI. Registration after transfer as provided in RSA 215-C:37- \$13.

Amend the bill by replacing section 19 with the following:

19 Administrative License Suspension. Amend RSA 215-A:11-q, III(b)(1) and (2) to read as follows:

(1) Six months if there is no prior refusal under RSA 265:92 [or], RSA 215-A:11-b, **or RSA 215-C:13**, no prior driving while intoxicated or aggravated driving while intoxicated convictions, and no prior administrative license suspension pursuant to RSA 265:91-a [or], RSA 215-A:11-q, **or RSA 215-C:27**.

(2) Two years if there is a prior refusal under RSA 265:92 [or], RSA 215-A:11-b, **or RSA 215-C:13** or a prior driving while intoxicated or aggravated driving while intoxicated conviction, or a prior administrative suspension pursuant to RSA 265:91-a [or], RSA 215-A:11-q, **or RSA 215-C:27**. If a license or driving privilege has been suspended under RSA 265:91-a [or], RSA 215-A:11-q, **or RSA 215-C:27** and the person is also convicted on criminal charges arising out of the same event, both the suspension and court ordered revocation shall be imposed pursuant to RSA 265:91-c.

Amend RSA 215-A:29, III as inserted by section 33 of the bill by replacing it with the following:

III. A person 12 years of age or older operating an OHRV shall carry evidence of compliance with subparagraph I(b) **or RSA 215-C:49, I(b)** in the form of a valid driver's license or evidence of successfully completing an OHRV training program. The person shall present such evidence to any law enforcement officer who is empowered to enforce this chapter, upon demand of such law enforcement officer.

Amend RSA 215-A:30, III as inserted by section 34 of the bill by replacing it with the following:

III. The OHRV training and driver's license requirements of RSA 215-A:29, I(b) and III **or RSA 215-C:49, I(b) and III** shall not apply to any person participating in an organized event or contest permitted under this section or in an event not requiring a permit as provided for in paragraph II.

Amend the bill by replacing section 66 with the following:

66 Effective Date. This act shall take effect July 1, 2006.

Amend the bill by deleting section 17 and renumbering the original sections 18-66 to read as 17-65, respectively.

SENATOR FLANDERS: Thank you, Mr. President. I want everybody to pick up the bill and look at the last page. You will see it says page 57. Anybody asks me any questions, I am reading every word of the bill. Thank you, Mr. President. I move Senate Bill 226 ought to pass as amended. This bill establishes a separate regulation for snowmobiles and those other things that we talked about earlier. That does not change the current authority or responsibility of the Department of Resources and Economic Development, nor the Fish and Game Department. There are no changes. The funding sources and administration practice remain the same. The amendment simply clarifies RSA numbers and does not change the bill in any way. Basically what we have done is we made two statutes. One is wheeled vehicles and one is snowmobiles which is....snowmobiles versus wheeled vehicles. They are identical. The ATV people are in favor of it. Fish and Game are in favor of it. DRED's in favor of it. Snowmobile people are in favor of it. Everybody was in favor of it. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

Transportation and Interstate Cooperation

March 23, 2005

2005-0890s

04/05

Amendment to SB 227

Amend the title of the bill by replacing it with the following:

AN ACT naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge, renaming the White Mountain Attraction Building as the Dick Hamilton Building, and renaming the Twin Mountain Bridge as the Kenneth B. Jordan Memorial Bridge.

Amend the bill by inserting after section 1 the following and renumbering the original sections 2-3 to read as 4-5, respectively:

2 Renaming the White Mountain Attraction Building as the Dick Hamilton Building. The White Mountains Attraction Building in the town of Lincoln is hereby renamed the Dick Hamilton Building. A suitable marker may be placed at the site of the building.

3 Renaming the Twin Mountain Bridge as the Kenneth B. Jordan Memorial Bridge. The Twin Mountain Bridge located at the approximate crossroads of New Hampshire routes 3 and 302 in the town of Twin Mountain is hereby renamed the Kenneth B. Jordan Memorial Bridge. A suitable marker may be placed at the site of the bridge.

2005-0890s

AMENDED ANALYSIS

This bill:

I. Names the Henry P. Brown, M.D. Bridge in the town of Enfield.

II. Renames the White Mountain Attraction Building in the town of Lincoln as the Dick Hamilton Building.

III. Renames the Twin Mountain Bridge as the Kenneth B. Jordan Memorial Bridge.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass with amendment on Senate Bill 227. At the end of a long day, Mr. President, this is a nice way to end. This bill came in as a request of the citizens of Enfield. They very much want to honor Henry P. Brown, M.D., and that is the way they address him, Henry P. Brown, M.D., for his many years of service to the community of Enfield. In the course of our discussion, an amendment was brought in by Senator Gatsas, excuse me, Senator Gallus. You're there, he's there. It has been a long day. The amendment was to add two other naming operations, one in honor of Kenneth B. Jordan an extraordinary young Marine who died many years ago in service of his country in Vietnam. The other to Dick Hamilton, who many of us remember as the exceptional man who organized tourism and visitation to the White Mountains and did such a great job for the state. I know that I speak for the committee in saying that it's an honor for all of us to request your support for Senate Bill 227 as amended.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 30, establishing the Collaborative Practice for Emergency Contraception Act.

SB 56, relative to penalties for eluding pursuit by a law enforcement officer.

SB 61, relative to judges giving notice of intent to retire, and relative to retired status for judges and assignment of judicial referees.

SB 86, permitting on-site samples and retail sales by liquor manufacturer licensees.

SB 89-FN, relative to financing federally aided highway projects.

SB 119, establishing a committee to study exempting acute care rehabilitation from the nursing home moratorium.

SB 121, relative to all terrain vehicle trails and relative to the regulation of off highway recreational vehicles by a political subdivision.

SB 143, relative to the adoption and use of impact fees for public open space.

SB 163-FN, establishing the New Hampshire pharmaceutical assistance program.

SB 167, relative to extension of guardianship.

SB 168, relative to administration of estates.

SB 179, requiring hunters to report the death or injury of domestic animals.

SB 183, authorizing licensed medical adult day program facilities to assist clients with medication.

SB 187, relative to allowing alternative certified hazardous waste coordinator programs.

SB 199, establishing exemptions from certain administrative requirements for the department of regional community-technical colleges.

SB 210-FN, relative to a declaratory judgment to adjudicate constitutional nexus.

SB 216, establishing a commission to study area agencies.

SB 226, relative to the regulation of snowmobiles and off highway recreational vehicles.

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge, renaming the White Mountain Attraction Building as the Dick Hamilton Building, and renaming the Twin Mountain Bridge as the Kenneth B. Jordan Memorial Bridge.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill(s) sent down from the Senate:

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

SJR 1, declaring the month of April 2005 to be Boston Red Sox Month.
Senator D'Allesandro moved adoption.

Adopted.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 469, regulating disputes between homeowners and contractors relative to residential construction defects.

HB 478-FN-A, making an appropriation for "Newline for the Blind."

HB 480, relative to innovative land use controls.

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services.

HB 532, relative to the licensure of dentists by the board of dental examiners.

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities.

HB 549, modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library.

HB 557, relative to the submission of data to the department of education.

HB 560, relative to timber harvesting.

HB 561, relative to reasonable accommodation by employers under the state law against discrimination.

HB 570, relative to preliminary site plan review and the definition of inclusionary zoning.

HB 573, establishing a commission to study automobile recycling issues, including disposal fees.

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

HB 594-FN, relative to retirement system classification for department of corrections correctional line personnel.

HB 595-FN, establishing the position of state meat inspector.

HB 599-FN, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles.

HB 611-FN, relative to small group insurers.

HB 618-FN-L, relative to persons acting as volunteers to a state agency.

HB 619-FN, relative to skier safety and ski area responsibility.

HB 637-FN, relative to licensure of alcohol and drug abuse professionals.

HB 683-FN, relative to reporting of motor vehicle offenses by driver education instructors and drivers' school licensees.

HB 721, prohibiting the department of education and the state board of education from adopting a definition of an adequate education.

HCR 2, a resolution declaring October 27 to be Boston Red Sox Day.

HCR 4, urging Congress to find that the Piscatqua River and Portsmouth Harbor lie within the state of New Hampshire.

HCR 8, a resolution urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participation are in the best interests of the citizens of the state of New Hampshire and the United States.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 469 to HCR 8, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 469, regulating disputes between homeowners and contractors relative to residential construction defects. (Public and Municipal Affairs)

HB 478-FN-A, making an appropriation for "Newsline for the Blind." (Finance)

HB 480, relative to innovative land use controls. (Public and Municipal Affairs)

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1. (Executive Departments and Administration)

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services. (Environment and Wildlife)

HB 532, relative to the licensure of dentists by the board of dental examiners. (Executive Departments and Administration)

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities. (Environment and Wildlife)

HB 549, modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library. (Public and Municipal Affairs)

HB 557, relative to the submission of data to the department of education. (Education)

HB 560, relative to timber harvesting. (Energy and Economic Development)

HB 561, relative to reasonable accommodation by employers under the state law against discrimination. (Banks and Insurance)

HB 570, relative to preliminary site plan review and the definition of inclusionary zoning. (Public and Municipal Affairs)

HB 573, establishing a commission to study automobile recycling issues, including disposal fees. (Transportation and Interstate Cooperation)

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D. (Energy and Economic Development)

HB 594-FN, relative to retirement system classification for department of corrections correctional line personnel. (Banks and Insurance)

HB 595-FN, establishing the position of state meat inspector. (Finance)

HB 599-FN, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. (Transportation and Interstate Cooperation)

HB 611-FN, relative to small group insurers. (Banks and Insurance)

HB 618-FN-L, relative to persons acting as volunteers to a state agency. (Internal Affairs)

HB 619-FN, relative to skier safety and ski area responsibility. (Banks and Insurance)

HB 637-FN, relative to licensure of alcohol and drug abuse professionals. (Executive Departments and Administration)

HB 683-FN, relative to reporting of motor vehicle offenses by driver education instructors and drivers' school licensees. (Transportation and Interstate Cooperation)

HB 721, prohibiting the department of education and the state board of education from adopting a definition of an adequate education. (Education)

HCR 2, a resolution declaring October 27 to be Boston Red Sox Day. (Public and Municipal Affairs)

HCR 4, urging Congress to find that the Piscatqua River and Portsmouth Harbor lie within the state of New Hampshire. (Public and Municipal Affairs)

HCR 8, a resolution urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participation are in the best interests of the citizens of the state of New Hampshire and the United States. (Internal Affairs)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 468, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff.

HB 490, relative to law enforcement access to financial records under the New Hampshire right to privacy act.

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses.

- HB 510**, relative to financial affidavits in domestic relations cases.
- HB 511**, relative to the confidentiality of records pertaining to the support of dependent children.
- HB 533-FN**, relative to penalties for aggravated felonious sexual assault.
- HB 558**, relative to the circumstances constituting sexual assault.
- HB 562**, relative to eliminating certain mercury-added products.
- HB 567**, relative to mediation in family law cases involving children.
- HB 583**, establishing an oversight committee to study medical malpractice insurance rates in this state.
- HB 584**, relative to evidence of admissions of liability in medical injury actions.
- HB 585**, relative to grounds for termination of parental rights.
- HB 586**, relative to the periodic review of child support guidelines.
- HB 640-FN**, relative to parental rights and responsibilities.
- HB 672-FN**, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts.
- HB 702-FN**, relative to the screening and mediation of medical malpractice claims.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 468 to 702, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

- HB 468**, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff. (Judiciary)
- HB 490**, relative to law enforcement access to financial records under the New Hampshire right to privacy act. (Banks and Insurance)
- HB 491**, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses. (Environment and Wildlife)
- HB 510**, relative to financial affidavits in domestic relations cases. (Judiciary)
- HB 511**, relative to the confidentiality of records pertaining to the support of dependent children. (Judiciary)
- HB 533-FN**, relative to penalties for aggravated felonious sexual assault. (Judiciary)
- HB 558**, relative to the circumstances constituting sexual assault. (Judiciary)
- HB 562**, relative to eliminating certain mercury-added products. (Environment and Wildlife)
- HB 567**, relative to mediation in family law cases involving children. (Judiciary)

HB 583, establishing an oversight committee to study medical malpractice insurance rates in this state. (Judiciary)

HB 584, relative to evidence of admissions of liability in medical injury actions. (Judiciary)

HB 585, relative to grounds for termination of parental rights. (Health and Human Services)

HB 586, relative to the periodic review of child support guidelines. (Health and Human Services)

HB 640-FN, relative to parental rights and responsibilities. (Judiciary)

HB 672-FN, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts. (Executive Departments and Administration)

HB 702-FN, relative to the screening and mediation of medical malpractice claims. (Judiciary)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 56, relative to food safety in restaurants.

HB 68, relative to the enforcement of disorderly conduct by reason of noise.

HB 114, relative to the regulation of pharmacists and pharmacy technicians by the pharmacy board.

HB 125, relative to ignition interlock devices.

HB 126, relative to a public employee right of free speech.

HB 132, relative to the grounds for dismissal of a teacher.

HB 170, relative to unemployment compensation.

HB 177, relative to home improvement contracts.

HB 205, relative to licensing requirements for certain drivers.

HB 214, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings.

HB 215-FN, relative to water management.

HB 220, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood.

HB 244-FN, relative to statutory liens by the department of safety.

HB 246, establishing a committee to study the classification of employees as independent contractors.

HB 248, authorizing semi-annual payments of school building aid.

HB 255, establishing a committee to study the pricing of milk.

HB 272-FN-A, making an appropriation to the barn preservation fund.

HB 275, defining farmers' market.

HB 293, establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county.

HB 294, relative to annulment of arrest records.

HB 299, establishing a committee to study state laws governing liens for labor and materials.

HB 301-L, relative to parent advisory councils for pupils with educational disabilities.

HB 307, establishing a committee to study the feasibility of licensing residential building and remodeling contractors.

HB 311-L, enabling towns to establish revolving funds for certain purposes.

HB 315, relative to best available technology for air pollution control.

HB 323-FN, relative to excluding social security numbers and other information from documents filed with registries of deeds.

HB 329, establishing the crime victim employment leave act.

HB 342, establishing a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands.

HB 343, establishing a commission to study accessibility for New Hampshire citizens to the water bodies in the state.

HB 346-L, relative to the procedure for withdrawal from a cooperative school district.

HB 348, relative to real and personal property conveyances made under powers of attorney.

HB 354, relative to the review, approval, and adoption of agency rules.

HB 359, defining "unnecessary hardship" for purposes of zoning variances.

HB 366, relative to maintenance of voter checklists.

HB 381-FN, relative to special elections, voter lists, and conduct of elections.

HB 383, relative to vital records administration.

HB 389, relative to the duties of the postsecondary education commission.

HB 393, establishing a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls.

HB 394, relative to real estate tax lien procedures for tax collectors.

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association.

HB 404, permitting employees to request a wage deduction for contributions to a political action committee.

HB 406, revising certain provisions of the home education statutes.

HB 420, relative to receiving and addressing complaints against licensees by the board of mental health practice.

HB 421, relative to effective dates.

HB 424-FN, prohibiting the receipt of cash gifts by elected officials.

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors.

HB 429, relative to representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals.

HB 432-FN, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions.

HB 435, establishing a separate high school civics graduation requirement.

HB 437, relative to the disposition of municipal records.

HB 440, relative to hearing ear dogs, guide dogs, and service dogs.

HB 465-FN, authorizing the board of medicine to take non-disciplinary remedial action against physicians.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 56 to 465, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 56, relative to food safety in restaurants. (Health and Human Services)

HB 68, relative to the enforcement of disorderly conduct by reason of noise. (Judiciary)

HB 114, relative to the regulation of pharmacists and pharmacy technicians by the pharmacy board. (Executive Departments and Administration)

HB 125, relative to ignition interlock devices. (Transportation and Interstate Cooperation)

HB 126, relative to a public employee right of free speech. (Public and Municipal Affairs)

HB 132, relative to the grounds for dismissal of a teacher. (Education)

HB 170, relative to unemployment compensation. (Banks and Insurance)

HB 177, relative to home improvement contracts. (Public and Municipal Affairs)

HB 205, relative to licensing requirements for certain drivers. (Transportation and Interstate Cooperation)

HB 214, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings. (Judiciary)

HB 215-FN, relative to water management. (Energy and Economic Development)

HB 220, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood. (Health and Human Services)

HB 244-FN, relative to statutory liens by the department of safety. (Transportation and Interstate Cooperation)

HB 246, establishing a committee to study the classification of employees as independent contractors. (Public and Municipal Affairs)

HB 248, authorizing semi-annual payments of school building aid. (Education)

HB 255, establishing a committee to study the pricing of milk. (Public and Municipal Affairs)

HB 272-FN-A, making an appropriation to the barn preservation fund. (Finance)

HB 275, defining farmers' market. (Public and Municipal Affairs)

HB 293, establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county. (Energy and Economic Development)

HB 294, relative to annulment of arrest records. (Judiciary)

HB 299, establishing a committee to study state laws governing liens for labor and materials. (Judiciary)

HB 301-L, relative to parent advisory councils for pupils with educational disabilities. (Education)

HB 307, establishing a committee to study the feasibility of licensing residential building and remodeling contractors. (Public and Municipal Affairs)

HB 311-L, enabling towns to establish revolving funds for certain purposes. (Internal Affairs)

HB 315, relative to best available technology for air pollution control. (Energy and Economic Development)

HB 323-FN, relative to excluding social security numbers and other information from documents filed with registries of deeds. (Judiciary)

HB 329, establishing the crime victim employment leave act. (Banks and Insurance)

HB 342, establishing a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands. (Environment and Wildlife)

HB 343, establishing a commission to study accessibility for New Hampshire citizens to the water bodies in the state. (Environment and Wildlife)

HB 346-L, relative to the procedure for withdrawal from a cooperative school district. (Education)

HB 348, relative to real and personal property conveyances made under powers of attorney. (Judiciary)

HB 354, relative to the review, approval, and adoption of agency rules. (Internal Affairs)

HB 359, defining "unnecessary hardship" for purposes of zoning variances. (Public and Municipal Affairs)

HB 366, relative to maintenance of voter checklists. (Internal Affairs)

HB 381-FN, relative to special elections, voter lists, and conduct of elections. (Internal Affairs)

HB 383, relative to vital records administration. (Executive Departments and Administration)

HB 389, relative to the duties of the postsecondary education commission. (Education)

HB 393, establishing a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls. (Transportation and Interstate Cooperation)

HB 394, relative to real estate tax lien procedures for tax collectors. (Ways and Means)

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association. (Finance)

HB 404, permitting employees to request a wage deduction for contributions to a political action committee. (Internal Affairs)

HB 406, revising certain provisions of the home education statutes. (Education)

HB 420, relative to receiving and addressing complaints against licensees by the board of mental health practice. (Executive Departments and Administration)

HB 421, relative to effective dates. (Executive Departments and Administration)

HB 424-FN, prohibiting the receipt of cash gifts by elected officials. (Internal Affairs)

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors. (Executive Departments and Administration)

HB 429, relative to representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals. (Judiciary)

HB 432-FN, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions. (Environment and Wildlife)

HB 435, establishing a separate high school civics graduation requirement. (Education)

HB 437, relative to the disposition of municipal records. (Public and Municipal Affairs)

HB 440, relative to hearing ear dogs, guide dogs, and service dogs. (Environment and Wildlife)

HB 465-FN, authorizing the board of medicine to take non-disciplinary remedial action against physicians. (Executive Departments and Administration)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 111, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire.

HB 152-FN, establishing a commission to study the uses of biodiesel for home heating and vehicular transportation.

HB 195, establishing a committee to study the department of insurance.

HB 202, directing the commissioner of the department of environmental services to review options for reducing diesel engine exhaust emissions.

HB 230-L, relative to default budgets.

HB 247, extending the law regarding receivership of care facilities for a certain length of time.

- HB 259**, relative to medical assistance for home care for children with severe disabilities.
- HB 260-FN**, relative to motor vehicle equipment and registration.
- HB 261**, relative to title to salvage vehicles.
- HB 267**, relative to requests for services other than counsel for indigent defendants.
- HB 268-FN**, increasing certain motor vehicle fees.
- HB 279**, relative to the classification of Spofford Lake in Chesterfield, New Hampshire.
- HB 306**, relative to mandatory education for crossbow hunters.
- HB 326**, relative to motorcycle noise levels and mufflers.
- HB 332**, relative to harassment by telephone.
- HB 351**, relative to the time for counting absentee ballots.
- HB 357**, relative to negligent driving.
- HB 362**, relative to statutes to be posted at polling places.
- HB 363**, relative to parking at polling places.
- HB 365**, relative to recount fees.
- HB 372**, relative to notification of interested parties in medical parole cases.
- HB 386**, relative to agricultural best management practices.
- HB 408**, relative to the sale of town-owned land.
- HB 415**, excepting installation of heating equipment from regulation by the electrician's board.
- HB 431-FN-L**, relative to competing articles and official ballot voting.
- HB 447-FN**, relative to black bear license and tag fees.
- HB 449-FN**, relative to special wild turkey seasons and permits.
- HB 450-FN-A**, extending the commission to study child support and related child custody issues and relative to hiring economists to assist in revising the child support guidelines and making an appropriation therefor.
- HB 457**, relative to excavating and dredging permit exemptions for water conveyance systems.
- HB 467**, relative to naming private roads.
- HB 472**, relative to the definition of recreational program.
- HB 498**, establishing a study committee relative to the sale of fire-safe cigarettes.
- HB 504**, relative to the assessment or refund of real estate transfer taxes, and the recording of plans with the register of deeds.
- HB 505**, relative to recording mailing addresses on property deeds.
- HB 514**, establishing the New Hampshire health care quality assurance commission.
- HB 521**, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system.
- HB 522**, establishing a committee to study gaming options for New Hampshire.

HB 546, relative to the status of the board of trustees of the retirement system.

HB 582, relative to the policy for records management.

HB 602-FN-A, relative to the unbundling of communications services for purposes of the application of the communications services tax.

HB 628-FN, relative to the authority of law enforcement officers to close an area for the purpose of abating a threat to public health or safety.

HB 647-FN, relative to restructuring the department of revenue administration.

HB 681-FN, relative to training, quality assurance, and licensing of assisted living facilities.

HB 696-FN, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities.

HB 697-FN, establishing a commission to study medicaid reimbursement rates for pharmacy providers.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 111 to 697, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 111, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire. (Health and Human Services)

HB 152-FN, establishing a commission to study the uses of biodiesel for home heating and vehicular transportation. (Transportation and Interstate Cooperation)

HB 195, establishing a committee to study the department of insurance. (Banks and Insurance)

HB 202, directing the commissioner of the department of environmental services to review options for reducing diesel engine exhaust emissions. (Transportation and Interstate Cooperation)

HB 230-L, relative to default budgets. (Internal Affairs)

HB 247, extending the law regarding receivership of care facilities for a certain length of time. (Health and Human Services)

HB 259, relative to medical assistance for home care for children with severe disabilities. (Health and Human Services)

HB 260-FN, relative to motor vehicle equipment and registration. (Transportation and Interstate Cooperation)

HB 261, relative to title to salvage vehicles. (Transportation and Interstate Cooperation)

HB 267, relative to requests for services other than counsel for indigent defendants. (Judiciary)

HB 268-FN, increasing certain motor vehicle fees. (Transportation and Interstate Cooperation)

- HB 279**, relative to the classification of Spofford Lake in Chesterfield, New Hampshire. (Energy and Economic Development)
- HB 306**, relative to mandatory education for crossbow hunters. (Environment and Wildlife)
- HB 326**, relative to motorcycle noise levels and mufflers. (Transportation and Interstate Cooperation)
- HB 332**, relative to harassment by telephone. (Judiciary)
- HB 351**, relative to the time for counting absentee ballots. (Internal Affairs)
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- HB 514**, establishing the New Hampshire health care quality assurance commission. (Health and Human Services)

HB 521, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system. (Banks and Insurance)

HB 522, establishing a committee to study gaming options for New Hampshire. (Ways and Means)

HB 546, relative to the status of the board of trustees of the retirement system. (Banks and Insurance)

HB 582, relative to the policy for records management. (Executive Departments and Administration)

HB 602-FN-A, relative to the unbundling of communications services for purposes of the application of the communications services tax. (Energy and Economic Development)

HB 628-FN, relative to the authority of law enforcement officers to close an area for the purpose of abating a threat to public health or safety. (Judiciary)

HB 647-FN, relative to restructuring the department of revenue administration. (Banks and Insurance)

HB 681-FN, relative to training, quality assurance, and licensing of assisted living facilities. (Health and Human Services)

HB 696-FN, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities. (Judiciary)

HB 697-FN, establishing a commission to study medicaid reimbursement rates for pharmacy providers. (Health and Human Services)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

April 7, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! Whenever you feel overwhelmed by the big job you have before you, think of the amazing man who passed from the stage of world history last Saturday. John Paul II had over one billion people committed to his care, responsibility for a massive bureaucratic organization, a 2,000 year old set of assumptions and traditions to follow, and a calling to manage all of this within the ever changing web of international politics. So, you don't have it so bad. And what made this simple wise man effective, authentic, comforting, and at times, infuriating, I think, was that he never forgot the fact that he had only one constituent, not a billion; one client, not a politically motivated constellation of them. He had only one and one only to which he was answerable, and he never forgot that he was elected to be the Vicar, that is the stand in, for Christ. Big job. He had only one person he needed to be popular with. Now, your calling, of course, is very different from the Pope's – thank God. But, as

we remember Pope John Paul, I would invite you to wonder whose measuring stick are you using to gauge your effectiveness, your faithfulness and your success in this big job to which you have been elected to? There are a whole lot of possible answers to that question and a lot of them can be right. But I suspect your job would be easier if you were as clear with your answer as he was with his. So, let me leave you with my very favorite Pope John Paul quote, something that every clergyperson, every lobbyist, every member of the media, and every public servant should remember: Here it is. "Stupidity is also a gift of God, but one mustn't misuse it". Let us pray.

Gracious God, fix our eyes upon what matters. Save us all from our own ongoing vocational malpractice, and show us and then remind us over and over again whose ultimate vote it is that really matters. Amen

Senator Foster led the Pledge of Allegiance.

SENATOR EATON (In the Chair): Before we have our introductions of guests, I would just like to take a brief moment and add to the comments already made by Reverend Jones regarding the passing of Pope John Paul II. Without question, the pontiff will be remembered as one of the great leaders of our time. A champion of both faith and freedom. As many of you remember, John Paul first visited the US in 1979 and, throughout his pilgrimage, he restated his theme of the hope, promise and responsibility America held for this world. Among his many stops, he stopped at the Living History Farms just outside of Des Moines. In addressing the crowd of more than 350,000 gathered in that Iowa cornfield, he said, "Sometimes, it takes a stranger from far away to remind us of our possibilities." So as we work out, throughout today and other days as public servants, may we remember, all of us, our possibilities. Thank you.

SENATOR EATON (In the Chair): The *Union Leader's* Warren Hastings worked for the *Union Leader* for 40 years now and he worked for like two weeks for the *New Hampshire Union Leader*, 35 of those in the paper's Concord Bureau. I also want to remark that we owe a debt of service to him because he served in the Marine Corps and the Reserves and the New Hampshire National Guard. Warren served under nine governors and 35 executive councilors. Warren, we wish you well as you move on further.

INTRODUCTION OF GUESTS COMMITTEE REPORTS

SB 22, authorizing the Holden School of Nursing to confer degrees. Education Committee. Re-refer to committee, Vote 4-1. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move SB 22 be re-referred. Senate Bill 22 seeks to give degree granting authority status to the Holden School of Nursing in Nashua for Registered Nursing Degrees. The committee recognizes the nursing shortage in this state and supports the goal of granting additional RN degrees. However, traditionally a school is only awarded degree granting status by this legislature after the exhaustive review process that the Post-Secondary Commission conducts. Currently, Holden is in the early stages of the approval process with the Post Secondary Commission and it is unlikely the process would be completed before the end of the year, the Secondary Commis-

sion tells us. The committee supports re-referring the bill in the hopes that when we re-convene in 2006 they will have completed their review from post secondary successfully and then we can take another look at the bill. Thank you.

Committee report of re-refer is adopted.

SB 170, revising the nurse practice act. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

March 30, 2005

2005-0976s

08/10

Amendment to SB 170

Amend the bill by replacing all after the enacting clause with the following:

1 Nurse Practice Act. RSA 326-B is repealed and reenacted to read as follows:

CHAPTER 326-B

NURSE PRACTICE ACT

326-B:1 Purpose. In order to safeguard the life, health, and public welfare of the people of New Hampshire and in order to protect the people of the state from the unauthorized, unqualified, and improper application of services by individuals in the practice of nursing, it is necessary that a regulatory authority be established and adequately funded. To further this policy, the practice of nursing shall be regulated through the New Hampshire board of nursing, and such board shall have the power to enforce the provisions of this chapter. Licensees under this chapter are accountable to clients, the nursing profession, and the board for complying with the requirements of this act and the quality of nursing care rendered, and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's experience.

326-B:2 Definitions. In this chapter:

I. "Advanced registered nurse practitioner" or "ARNP" means a registered nurse currently licensed by the board under RSA 326-B:19.

II. "Board" means the New Hampshire board of nursing established in RSA 326-B:3.

III. "Competence development" means the method by which a licensee gains, maintains, or refines practice knowledge, skills, and abilities. This development may occur through a formal education program, continuing education, and clinical practice, and is expected to continue throughout the practitioners' career.

IV. "Licensed nursing assistant" or "LNA" means an individual who holds a current license to provide client care under the direction of a registered nurse or licensed practical nurse.

V. "Licensed practical nurse" or "LPN" means an individual who holds a current license to practice practical nursing as defined in paragraph XII.

VI. "Medication nursing assistant" means a licensed nursing assistant holding a currently valid certificate authorizing the delegation to the nursing assistant of tasks of medication administration.

VII. "Nursing" means assisting clients or groups of clients to attain or maintain optimal health by implementing a strategy of care to accomplish defined goals and by evaluating responses to nursing care and medi-

cal treatment. Nursing includes basic health care that helps both clients and groups of clients cope with difficulties in daily living associated with their actual or potential health or illness status and also those nursing activities that require a substantial amount of scientific knowledge or technical skill. Nursing also includes, but is not limited to:

- (a) Promoting an environment conducive to well-being.
- (b) Planning and implementing independent nursing strategies and prescribed treatment in the prevention and management of illness, injury, and disability and the achievement of a dignified death.
- (c) Providing health counseling and teaching.
- (d) Collaborating on aspects of the health regimen.
- (e) Advocating for the client's medical needs.

VIII. "Nursing-related activities" means client care provided by a licensed nursing assistant directed by an ARNP, an RN, or an LPN.

IX. "Practical nursing" means the practice of nursing as defined in paragraph VII by a person who:

- (a) Uses sound nursing judgment based on preparation, knowledge, skills, understanding, and past nursing experience.
- (b) Works under the direction of a registered nurse, advanced registered nurse practitioner, dentist, or physician.
- (c) Functions as a member of a health care team and contributes to the assessment, planning, implementation, and evaluation of client care.

X. "Registered nurse" or "RN" means an individual who holds a current license to practice registered nursing as defined in paragraph XI.

XI. "Registered nursing" means the application of nursing knowledge, judgment, and skill drawn from broad in-depth education in the biological, psychological, social, and physical sciences in assessing and diagnosing the health status of a client, and in planning, implementing, and evaluating client care which promotes the optimum health, wellness, and independence of the individual, the family, and the community.

326-B:3 Board of Nursing.

I. The board of nursing shall comprise 11 members to be appointed by the governor with the consent of the council. Any interested individual, association, or entity may make recommendation to the governor. The members of the board shall include 5 registered nurses, one of whom shall be an advanced registered nurse practitioner, 2 licensed practical nurses, 2 licensed nursing assistants, one of whom shall be a medication licensed nursing assistant if possible, and 2 representative members of the public. The terms of members shall be staggered as determined by the governor and council. All terms shall be for 3 years, and no member of the board shall be appointed to more than 3 consecutive terms.

II. Each RN member shall be a resident of this state, licensed in good standing under the provisions of this chapter, and currently engaged in the practice of nursing as an RN and shall have no fewer than 5 years of experience as an RN, at least 3 of which shall have immediately preceded appointment. RN members of the board shall represent the various areas of nursing practice including education, administration, and clinical practice.

III. The LPN members of the board shall be residents of this state, licensed in good standing under the provisions of this chapter, and currently engaged in the practice of nursing and shall have had no fewer than 5 years of experience as an LPN, at least 3 of which shall have immediately preceded the date of appointment.

IV. The LNA members of the board shall be residents of this state, licensed in good standing under the provisions of this chapter, and currently engaged in nursing-related activities. These members shall have a minimum of 5 years of experience as an LNA, at least 3 of which shall have immediately preceded the date of their appointment.

V. The public members shall be residents of the state of New Hampshire who are not, and never have been, members of the nursing profession or the spouse of any such person. The public members shall not have, and shall never have had, a material financial interest in either the provision of nursing services or an activity directly related to nursing, including the representation of the board or its predecessor or the profession for a fee at any time during the 5 years preceding the date of appointment.

VI. No more than one board member shall be associated with a particular agency, corporation, or other enterprise or subsidiary at one time.

VII. Each member of the board shall be compensated at the rate of \$100 for attendance at a regular board meeting and \$50 for each other day actually engaged in official duties of the board, and shall be reimbursed for actual and necessary expenses incurred in the discharge of official duties, including travel at the state employee mileage rate.

VIII. An appointee to a full term on the board shall be appointed by the governor with the consent of the council before the expiration of the term of the member being succeeded and shall become a member of the board on the first day following the appointment expiration date of the previous appointee. Appointees to unexpired portions of full terms shall become members of the board on the day following such appointment, and shall serve the unexpired term and then be eligible to serve 3 full 3-year terms.

IX. The governor may remove any member from the board for neglect of any duty under RSA 326-B:4 or for incompetence or unprofessional or dishonorable conduct. Any person may file a complaint against a board member with the department of health and human services. The provisions of RSA 4:1 controlling the removal of public officials from office shall be followed in dismissing board members.

X. All members of the board and its agents or employees shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members, agents, or employees, as long as they are not acting in a wanton or reckless manner.

XI. Board meetings shall be open to the public. In accordance with RSA 91-A:3, the board may conduct part of a meeting in nonpublic session.

XII. The board shall be administratively attached, under RSA 21-G:10, to the department of health and human services.

326-B:4 Powers and Duties of the Board. The board may:

- I. Establish reasonable and uniform standards for nursing practice.
- II. Provide consultation regarding nursing practice for institutions and agencies and investigate reports of illegal practice.
- III. Examine, license, and renew the licenses of duly qualified individuals. The board shall select an appropriate nationally approved licensing examination.

IV. Gather and report to the public statistical information regarding, but not limited to, the education and licensure of registered and practical nurses.

V. Conduct investigations, hearings, and proceedings concerning alleged violations of this chapter or of rules adopted under this chapter.

VI. Subpoena witnesses, records, and documents, as needed, and administer oaths to those testifying at hearings.

VII. Determine and enforce appropriate disciplinary action against all individuals found guilty of violating this chapter or the rules adopted under this chapter.

VIII. Deny or withdraw approval of nursing educational programs that do not meet the minimum requirements of this chapter.

IX. Maintain records of proceedings as required by the laws of New Hampshire.

X. Conduct conferences, forums, studies, and research on nursing practice and education.

XI. Obtain legal counsel, hearing officers, accountants and such other employees, assistants, and agents as may be necessary, in the opinion of the board to administer and enforce the provisions of this chapter.

XII. Prescribe the duties of a qualified registered nurse to serve as executive director and request such additional staff positions as may be necessary to administer and enforce the provisions of this chapter.

XIII. Establish and collect fees, under rules adopted by the board pursuant to RSA 541-A, relative to applicants seeking any type of license issued by the board under this chapter, including fees for applications for temporary licenses, reinstatement of inactive licenses, license by examinations, renewal of licenses, and multistate licenses, as well as fees for verifying license status, program graduation, or computerized lists.

XIV. Require a registered nurse or a licensed practical nurse licensed in the state of New Hampshire to obtain a multistate license if the registered nurse or licensed practical nurse practices in a remote state. The board may charge an additional fee for such a multistate license.

XV. In accordance with state due process laws, limit the multistate licensure privilege of any registered nurse or licensed practical nurse to practice in New Hampshire and may take any other actions under applicable state laws necessary to protect the health and safety of New Hampshire citizens. If the board does take such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such action taken by the state of New Hampshire.

326-B:5 Administration By Executive Director.

I. The executive director shall have at least the following qualifications:

- (a) Be eligible for licensure to practice as an RN in this state; and
- (b) Hold a master's degree in nursing or hold a master's degree in a related field and a baccalaureate degree in nursing.

II. The executive director shall be responsible for:

- (a) The performance of the administrative responsibilities of the board.
- (b) Employment of personnel needed to carry out the functions of the board.
- (c) The performance of any other duties the board may direct.

326-B:6 Collection and Expenditure of Funds. The board shall receive and expend funds provided such funds are received and expended for the pursuit of the objectives authorized by this chapter. Fees, fines, and administrative charges other than those collected pursuant to RSA 326-B:8 shall be deposited in the general fund.

326-B:7 Nursing Assistant Fees and Fines; Continual Appropriation.

I. The nursing assistant fund is established in the state treasury and continually appropriated to the board which shall administer the fund. The fund shall be used only for administration of the nursing assistant component and expenses relating to that component.

II. All fees, charges, and fines relating to nursing assistants shall be credited to the fund.

326-B:8 Fees; Charges.

I. The board shall charge fees for the issuance, renewal, and reinstatement of all licenses, specialty licenses, and certificates authorized by this chapter. The board shall recover at least 125 percent of its direct expenses through licensee fees, fines, and administrative charges.

II. The board may provide the following services and make administrative charges for:

(a) The administration of examinations required by this chapter.

(b) Verification of licensure status.

(c) The sale of lists of licensees who have given their written authorization to have their names included on such lists.

(d) The actual costs of a criminal conviction record check required pursuant RSA 326-B:16.

(e) The actual cost of collection of statistical data provided to private entities.

326-B:9 Public Hearings on Fees.

I. The board shall be exempt from the requirements, procedures, and provisions of RSA 541-A with respect to the establishment of fees.

II. The board shall review all fees on a biannual basis.

III. The board shall hold at least one public hearing on all proposed changes to such fees.

326-B:10 Rulemaking Authority. The board shall adopt rules, in accordance with RSA 541-A, relative to the following:

I. Application procedures and eligibility requirements for the issuance of all initial, temporary, and renewal licenses, specialty licenses, and certificates issued by the board, including the issuance of such licenses to applicants holding a currently valid license or other authorization to practice in another jurisdiction.

II. Application procedures and eligibility requirements for the reinstatement of licenses after lapse and after disciplinary action.

III. Recognition of national certifying bodies issuing specialty certifications required for licensure as an ARNP.

IV. The standards to be met by, and the process for approval of, education programs designed to prepare applicants to qualify for licensure or certification in any of the disciplines regulated by the board, including the time period within which noncompliance must be corrected before such approval is withdrawn.

V. The standards to be met by, and the process for approval of, education programs designed to prepare LPNs in intravenous therapy and by programs designed to prepare LNAs to perform tasks not addressed in the basic curriculum required for licensure.

VI. The determination of disciplinary sanctions authorized by this chapter, including the determination of administrative fines.

VII. The administration of examinations authorized by this chapter, and the manner in which information regarding the contents of any licensing examinations may be disclosed, solicited, or compiled.

VIII. Ethical standards for the practice of nursing and nursing-related activities.

IX. Competence development requirements.

X. Designations that may be used by persons regulated by the board and retired persons regulated by the board.

XI. The implementation and coordination of the nurse licensure compact adopted in RSA 326-B:47. The board shall use model rules developed for the nurse licensure compact by the National Council of State Boards of Nursing as the basis for adopting rules which shall be modified as necessary to comply with state statutes.

326-B:11 Joint Health Council.

I.(a) The joint health council shall consist of 9 members as follows: 3 licensed, practicing ARNPs, appointed by the board of nursing; 3 licensed, practicing physicians who work with ARNPs, appointed by the board of medicine; and 3 licensed clinical pharmacists who are practicing clinical pharmacists, appointed by the board of pharmacy. In no case shall a member of the joint health council be a member of the member's appointing board.

(b) The chairmanship of the council shall rotate annually among the appointees of the 3 respective boards. Administrative expenses shall be assumed, and administrative support services provided, by the board of nursing.

(c) Members of the council shall be appointed for 3-year terms and shall serve no more than 2 terms.

II. The council shall meet not less than once every 3 months to discuss matters pertinent to the ARNP formulary and matters of mutual concern to the board of medicine, the board of nursing, and the board of pharmacy, unless there are no agenda items. Any council member may submit items to be considered by the council. Any council member may request that an item submitted for consideration by the council include relevant scientific information from recognized professional publications. A denial of a request to include a drug in the formulary or a decision to further restrict a drug already approved by the council shall be issued in writing and shall include relevant scientific information from recognized professional publications.

III. The duties of the joint health council shall include, but not be limited to, determining the type of ARNP formulary, exclusionary, inclusionary, or other, and adding to or altering the list of controlled and non-controlled molecular entities in the ARNP formulary. The council shall render decisions on such additions or alterations within 3 months of initial consideration unless there is a request for additional scientific information. Appeals of decisions shall be submitted to the council in writing for further deliberation by the council. The ARNP formulary shall be updated at least annually and shall be available in paper and electronic format from the board of nursing, the board of medicine, and the board of pharmacy.

IV. Meetings of the joint health council shall be open to the public and conducted in accordance with the provisions of RSA 91-A. Meetings shall be conducted in a building owned or leased by the state and situated in Concord. Notice of the time and place of each meeting shall be posted in the house and senate calendars at least 30 days prior to the meeting date.

326-B:12 Scope of Practice and Authority; Advanced Registered Nurse Practitioner.

I. Advanced registered nursing practice by nurse practitioners, nurse anesthetists, nurse midwives, or clinical nurse specialists shall consist of a combination of knowledge and skills acquired in basic nursing edu-

cation; licensure as a registered nurse; and graduation from or completion of a graduate level ARNP program accredited by a national certifying body in the appropriate ARNP role and specialty.

II. The ARNP scope of practice, with or without compensation or personal profit, shall include the registered nurse scope of practice. The scope of practice of an ARNP includes but is not limited to performing acts of advanced assessment, diagnosing, prescribing, selecting, administering, and dispensing therapeutic measures, including over-the-counter drugs, legend drugs, and controlled substances.

III. An ARNP shall practice within standards established by the board. Each ARNP shall be accountable to clients and the board:

(a) For complying with this chapter and the quality of advanced nursing care rendered;

(b) For recognizing limits of knowledge and experience, planning for the management of situations beyond the ARNP's expertise; and

(c) For consulting with or referring clients to other health care providers as appropriate.

IV. An ARNP shall have authority to possess, compound, prescribe, administer, and dispense and distribute to clients controlled and non-controlled drugs in accordance with the formulary established by the joint health council and within the scope of the ARNP's practice as defined by this chapter. Such authority may be denied, suspended, or revoked by the board after notice and the opportunity for hearing, upon proof that the authority has been abused.

326-B:13 Scope of Practice; Registered Nurse.

I. An RN shall, with or without compensation or personal profit, practice nursing that incorporates caring for all clients in all settings, is guided by nursing standards and evidence-based practice guidelines developed by a national certifying body and approved by the board, and shall include but is not limited to:

(a) Providing comprehensive nursing assessment of the health status of clients, families, groups, and communities.

(b) Collaborating with a health care team to develop an integrated client-centered plan of health care.

(c) Developing a plan of nursing strategies to be integrated within the client-centered health care plan that establishes nursing diagnoses, setting goals to meet identified health care needs, prescribing nursing interventions, and implementing nursing care through the execution of independent nursing strategies and prescribed medical regimen.

(d) Delegating and assigning nursing interventions to implement the plan of care.

(e) Providing for the maintenance of safe and effective nursing care rendered directly or indirectly.

(f) Promoting a safe and therapeutic environment.

(g) Providing health teaching and counseling to promote, attain, and maintain the optimum health level of clients, families, groups, and communities.

(h) Advocating for clients, families, groups, and communities by attaining and maintaining what is in the best interest of the client or group.

(i) Evaluating responses to interventions and the effectiveness of the plan of care.

(j) Communicating and collaborating with other health care professionals in the management of health care and the implementation of the total health care regimen within and across care settings.

(k) Acquiring and applying critical new knowledge and technologies to the practice of nursing.

(l) Managing, supervising, and evaluating the practice of nursing.

(m) Teaching the theory and practice of nursing.

(n) Participating in the development of policies, procedures, and systems to support the client.

(o) Other nursing services that require education and training prescribed by the board and in conformance with national nursing standards. Additional nursing services shall be commensurate with the RN's experience, continuing education, and demonstrated competencies.

II. Each RN is accountable to clients, the nursing profession, and the board for complying with the requirements of this act and the quality of nursing care rendered, and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's experience.

326-B:14 Scope of Practice; Licensed Practical Nurse.

I. An LPN shall, with or without compensation or personal profit, practice under the supervision of an RN, ARNP, licensed physician, or other health care provider authorized to delegate health care activities and functions. Such practice is guided by nursing standards developed by a national certifying body and approved by the board, and shall include, but is not limited to:

(a) Collecting data and conducting nursing assessments of the health status of clients.

(b) Planning nursing care for clients with stable conditions.

(c) Participating in the development and modification of the comprehensive plan of care for all types of clients.

(d) Implementing appropriate aspects of the strategy of care within the LPN scope of practice.

(e) Participating in nursing care management through delegating, assigning, and directing nursing interventions that may be performed by others, including other LPNs, that do not conflict with this chapter.

(f) Maintaining safe and effective nursing care rendered directly or indirectly.

(g) Promoting a safe and therapeutic environment.

(h) Participating in health teaching and counseling to promote, attain, and maintain the optimum health level of clients.

(i) Serving as an advocate for the client by communicating and collaborating with other health service personnel.

(j) Participating in the evaluation of client responses to interventions.

(k) Communicating and collaborating with other health care professionals.

(l) Providing input into the development of policies and procedures.

(m) Other nursing services that require education and training prescribed by the board and in conformance with national nursing standards. Additional nursing services shall be commensurate with the LPN's experience, continuing education, and demonstrated LPN competencies.

II. Each nurse is accountable to clients, the nursing profession, and the board for complying with the requirements of this chapter and the quality of nursing care rendered and for recognizing limits of knowledge and experience and planning for management of situations beyond the nurse's expertise.

III. LPNs who have successfully completed the curriculum of a board-approved LPN intravenous therapy course may administer intravenous solutions under the direction of a physician or dentist, or as delegated by an RN.

326-B:15 Scope of Practice; Licensed Nursing Assistant.

I. An LNA shall, with or without compensation or personal profit, practice under the supervision of an RN, ARNP, or LPN.

II. An LNA is responsible for competency in the nursing assistant curriculum approved by the board. LNAs are authorized to administer medication when they hold a currently valid certificate of medication administration and under the circumstances established by the board through rules adopted pursuant to RSA 541-A.

III. Following successful completion of the curriculum, a nursing assistant shall be able to:

(a) Form a relationship, communicate, and interact effectively with individuals and groups in a nursing environment.

(b) Demonstrate comprehension related to individuals' emotional, mental, physical, and social health needs through skillful, direct nursing-related activities.

(c) Assist individuals to attain and maintain functional independence in a home or health care facility.

(d) Exhibit behaviors supporting and promoting care recipients' rights.

(e) Demonstrate observational and documenting skills required for reporting of people's health, safety, welfare, physical and mental condition, and general well-being.

(f) Provide safe nursing-related activities under the supervision of an RN or an LPN.

IV. LNAs may perform tasks not addressed in the basic curriculum required for licensure if they obtain additional training in the performance of such tasks through programs approved by the board. Additional tasks may be delegated provided:

(a) The task has been properly delegated to the nursing assistant by the supervising licensed nurse pursuant to RSA 326-B:29.

(b) The task has not been made exempt from nursing assistant practice.

(c) The policies of the employing health care facility allow the delegation of the task to an LNA.

326-B:16 Criminal Record Checks.

I. Every applicant for initial licensure or license renewal or reinstatement shall submit to the board a notarized criminal conviction record release authorization form, as provided by the division of state police, which authorizes the release of his or her criminal conviction record to the board pursuant to RSA 106-B:14.

II. Upon receipt of a notarized criminal conviction record release authorization form from the board or from an applicant for licensure or license renewal or reinstatement, the division of state police shall conduct a criminal conviction record check pursuant to RSA 106-B:14 and provide the results to the board.

III. The board shall review the criminal record information prior to making a licensing decision and shall maintain the confidentiality of all criminal conviction records received pursuant to this section.

326-B:17 Licensure; All Applicants. All applicants shall:

I. Submit a completed application and fees as established by the board.

II. Have the ability to read and write in the English language.

III. Report any pending criminal charges, criminal convictions, or plea arrangement in lieu of convictions.

IV. Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made.

V. Meet competence development requirements as defined in rules adopted under RSA 541-A.

VI. Meet other criteria as established by the board.

326-B:18 Registered Nurse and Licensed Practical Nurse; Initial License by Examination.

I. The board shall administer the examination to applicants for licensure as RN's or LPN's.

II. The board may employ, contract, and cooperate with any entity in the preparation and process for determining results of a valid, reliable, legally defensible and uniform licensure examination. When such an examination is utilized, the board shall restrict access to questions and answers.

III. The board shall determine whether a license examination may be repeated, the frequency of reexamination, and any requisite education prior to reexamination.

IV. An applicant for licensure by examination to practice as an RN or LPN who successfully meets the requirements of this section shall be entitled to licensure as an RN or LPN, whichever is applicable.

V. Applicants for licensure by exam as an RN or LPN shall graduate from or verify successful completion and eligibility for graduation from a board approved nursing education program or a program that meets criteria comparable to those established by the board.

VI. An internationally educated applicant for RN or LPN licensure by examination shall meet the requirements as established by the board.

326-B:19 Advanced Registered Nurse Practitioner; Licensure.

I. An applicant for initial ARNP licensure shall:

(a) Hold a current license as a registered nurse;

(b) Have graduated with a graduate degree earned in an accredited advanced registered nurse practitioner education program;

(c) Be currently certified by a board-recognized national certifying body in the specialty for which the applicant was educated; and

(d) Meet other criteria as established by the board.

II. The board may issue one or more licenses to applicants meeting the qualifications established in paragraph I.

326-B:20 Licensed Nursing Assistant; Licensure by Examination. Applicants for an initial LNA license shall:

I. Submit documentation of successful completion and certification from a board approved nursing assistant education program.

II. Pass an examination approved by the board.

III. Meet other criteria as established by the board.

326-B:21 Registered Nurse and Licensed Practical Nurse; Licensure by Endorsement. An applicant for licensure by endorsement to practice as an RN or LPN who is currently licensed or certified in any other state or jurisdiction shall:

I. Hold an active unencumbered license as an RN or LPN.

II. Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction, or, if such acts have been committed and would be grounds for disciplinary action as set forth in this chapter, the board has found, after investigation, that sufficient restitution has been made.

III. Pass an examination approved by the board.

IV. Submit verification of licensure status directly from the jurisdiction of licensure by examination.

V. Meet other criteria established by the board.

326-B:22 Licensed Nursing Assistant; Licensure by Endorsement. An applicant for licensure by endorsement as a licensed nursing assistant who is currently licensed or certified in any other state or jurisdiction shall:

I. Provide proof of current and original licensing, certification, or nursing assistant registry status;

II. Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made; and

III. Meet other criteria as established by the board.

326-B:23 License Renewal; All Licensees:

I. Any person licensed who intends to continue practicing as a nurse or nursing assistant shall:

(a) By midnight on his or her date of birth in the renewal year submit a completed application and fees as established by the board;

(b) Report any pending criminal charges, criminal convictions, or plea arrangements in lieu of convictions;

(c) Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made;

(d) Meet competence development requirements as defined in rules adopted under RSA 541-A;

(e) For those licensees applying for renewal following disciplinary action, comply with all board licensure requirements as well as any specific requirements set forth in the board's discipline order; and

(f) Meet other criteria as established by the board.

II. Failure to renew the license shall result in forfeiture of the ability to practice nursing in the state of New Hampshire.

326-B:24 License Reinstatement; All licensees. An individual whose license has lapsed by failure to renew may apply for reinstatement by meeting all requirements for renewal, or satisfying the following conditions:

I. An individual who applies for license reinstatement who does not meet the competence development requirements shall demonstrate current nursing or nursing assistant knowledge and skill.

II. For those licensees applying for reinstatement following disciplinary action, compliance with all board licensure requirements as well as any specific requirements set forth in the board's discipline order.

326-B:25 Temporary Licenses; All Licensees. The board may issue temporary licenses to applicants who meet entry level licensing requirements in the license category. A temporary license shall expire on the date the board approves or denies the permanent license sought by the holder of the temporary license, or in 120 days, whichever is less.

326-B:26 Modified License; Registered Nurse or Licensed Practical Nurse. The board may issue a modified license to an individual who has met licensure requirements and who is able to practice without compromising public safety within a modified scope of practice or with accommodations or both as specified by the board.

326-B:27 Licensed Nursing Assistant Registry. The board shall maintain a registry of nursing assistants licensed who qualify pursuant to 42 C.F.R. section 483.156. Nursing assistants who are registered or licensed shall

comply with all provisions of the Omnibus Reconciliation Act (OBRA) of 1987, sections 1819 and 1919 of the Social Security Act, and all provisions of this chapter.

326-B:28 Certificate of Medication Administration for Licensed Nursing Assistants.

I. The board may issue a certificate of medication administration to a current LNA who:

- (a) Has participated in and completed a board-approved medication administration education program;
- (b) Has passed an examination approved by the board; and
- (c) Has paid the certification fee.

II. Certification may be renewed on a biennial basis.

326-B:29 Delegation of Nursing Activities and Tasks. A nurse holding a currently valid license as an RN or an LPN may delegate specific nursing activities and tasks under the circumstances, and in accordance with the constraints, set forth in rules of the board adopted under RSA 541-A.

326-B:30 Delegation; Circumstances Not Subject to Disciplinary Action.

I. A licensee who delegates or has delegated a specific nursing activity or task in compliance with this chapter shall not be subject to disciplinary action because of the performance of the person to whom the nursing activity or task is or was delegated.

II. No person may coerce an RN or an LPN into compromising client safety by requiring the nurse to delegate a nursing activity or task when the nurse determines that it is inappropriate to do so. A licensee shall not be subject to disciplinary action for refusing to delegate, or refusing to accept delegated nursing activities or tasks or refusing to provide training related to such delegation when the licensee has determined that such delegation may compromise client safety.

326-B:31 Obligations of Licensees.

I. In response to board inquiries relevant to a licensee's status or practice of nursing or nursing-related activities, each licensee shall provide complete and truthful information.

II. Each licensee shall notify the board if a license is lost or stolen.

III. Each licensee shall notify the board of a change of name or address within 10 days.

IV. Each licensee shall report to the board those acts or omissions which are violations of this chapter or grounds for disciplinary action.

326-B:32 Continuing Education. Applicants for license renewal and license reinstatement after lapse shall complete continuing education as follows:

I. An LNA shall complete 12 hours of continuing education in programs approved by the board each year, provided that licensees who hold a certificate of medication administration shall complete at least 4 hours of those 12 hours in medication administration.

II. An LPN or an RN shall complete 30 hours of continuing education every 2 years.

III. An ARNP, in addition to the continuing education requirements to renew or reinstate a license as an RN, shall complete 30 hours of continuing education every 2 years, 20 hours of which shall be specific to the specialty for which renewal or reinstatement is sought, and 5 hours of which shall be training in pharmacology appropriate to the specialty for which license renewal or reinstatement is sought.

326-B:33 Education Programs.

I. The board shall establish standards for the establishment and outcomes for nursing and nursing assistant education programs, including clinical learning experiences, and approve such programs that meet the requirements of this chapter.

II. The board shall establish the process for determining nursing and nursing assistant education program compliance.

III. The board:

(a) Shall set requirements for establishment of new nursing and nursing assistant programs.

(b) Shall periodically review nursing and nursing assistant education programs and require such programs to submit evidence of compliance with standards.

(c) Shall grant continuing approval if, upon review of evidence, the board determines that the program meets the established standards. The board shall publish a list of approved programs.

(d) May deny or withdraw approval or take such action as deemed necessary when nursing or nursing assistant education programs fail to meet the standards established by the board.

(e) Shall reinstate approval of a nursing or nursing assistant education program upon submission of satisfactory evidence that its program meets the standards established by the board.

(f) Shall establish the process for nursing and nursing assistant programs that cease operation.

IV. Any education program conducted in another state shall be deemed to be an education program approved by the board if that program meets the requirements for approval established by this section and the program has been approved by the regulatory authority of its state.

326-B:34 Duty to Warn of Violent Acts of Client; Civil Liability.

I. A psychiatric/mental health ARNP, defined in paragraph V of this section, or other ARNP licensed under this chapter has a duty to warn of, or to take reasonable precautions to provide protection from, a patient's violent behavior when the patient has communicated to such psychiatric/mental health ARNP or other ARNP licensed under this chapter a serious threat of physical violence against a clearly identified or reasonably identifiable person or persons, or a serious threat of substantial damage to real property.

II. The duty may be discharged by, and no monetary liability or cause of action may arise against, a psychiatric/mental health ARNP or other ARNP licensed under this chapter if the psychiatric/mental health ARNP or other ARNP licensed under this chapter makes reasonable efforts to communicate the threat to the person or persons, notifies the police department closest to the patient's or potential victim's residence, or obtains civil commitment of the patient to the state mental health system.

III. No monetary liability and no cause of action may arise concerning patient privacy or confidentiality against a psychiatric/mental health ARNP or other ARNP licensed under this chapter for information disclosed to third parties in an effort to discharge a duty under paragraph II.

IV. For purposes of this section, "psychiatric/mental health ARNP or other ARNP licensed under this chapter" shall include persons providing treatment under the supervision of a psychiatric/mental health ARNP or other ARNP licensed under this chapter.

V. For the purposes of this section, "psychiatric/mental health ARNP" means an individual who is defined by and whose scope of practice is described under the rules adopted pursuant to this chapter and which apply to this special category.

326-B:35 Duties of Licensees Relating to Reports of Sexual Relations.

I. If, during the course of diagnosis or treatment by a licensee, a client alleges that another mental health counselor or health care practitioner licensed by the board of nursing or another state licensing or certifying agency has engaged with the client in sexual relations, the licensee shall have a duty to inform the client that the act reported by the client may be unprofessional or unethical and may subject the actor to disciplinary action by the actor's licensing or certifying agency.

II. No liability for breach of client confidentiality, slander, or defamation, or other civil or criminal liability, shall arise from the disclosure by a licensee of information related to reported sexual relations between a client and any mental health counselor or health care licensee of a state licensing or certifying agency when the disclosure is made in good faith and made to the board or any other state licensing or certifying agency.

326-B:36 Privileged Communications Between Licensees and Their Clients.

I. Confidential communications between licensees and their clients are privileged in the same manner as those provided by law between physician and patient, and, except as otherwise provided by law, no licensee shall be required to disclose such privileged communications. Confidential communications between a client of a licensee and any person working under the supervision of such licensee to provide services that are customary and necessary for diagnosis and treatment are privileged to the same extent as would be the same communications between the supervising licensee and the client.

II. This section shall not apply to disciplinary proceedings conducted by:

(a) The board;

(b) The board of examiners of nursing home administrators under RSA 151-A:11; or

(c) Any other statutorily-created health care occupational licensing board conducting disciplinary proceedings.

III. This section shall not apply to hearings conducted pursuant to RSA 135-C or RSA 464-A.

326-B:37 Emergency Treatment; Assisting the Board; Immunity From Civil Liability.

I. No person licensed to practice under this chapter or under the laws of any other state who, in good faith, renders emergency care at the scene of an emergency, which occurs outside both the place and the course of employment, shall be liable for any civil damages as a result of acts or omissions in rendering such emergency care, or as a result of any act or failure to act to provide or arrange for further medical treatment or care.

II. Any person acting in good faith shall be immune from civil liability to a licensee or an applicant for licensure for making any report or other information available to the board or assisting the board in carrying out any of its duties.

III. Nurses licensed in other states who respond to emergencies in New Hampshire during a civil disaster event shall be immune from civil liability and board action for acts or omissions in rendering such emergency care, or as a result of any act or failure to act to provide or arrange for further medical treatment or care.

326-B:38 Disciplinary Action; Misconduct.

I. The board may undertake investigations and disciplinary proceedings:

(a) Upon its own initiative.

(b) Upon written complaint of any person which charges that a licensee has committed any acts of misconduct under this section and which specifies the grounds for such complaint.

II. The board may discipline a licensee or applicant for any one or a combination of the following grounds:

(a) Failing to demonstrate the qualifications or satisfy the requirements.

(b) Conduct that violates the security of the examination, including, but not limited to:

(1) Copying, disseminating, or receiving any portion of an examination.

(2) Having unauthorized possession of any portion of a future, current, or previously administered examination.

(3) Violating test administration.

(4) Permitting an impersonator to take the examination on one's behalf or impersonating an examinee.

(c) Convictions by a court or any plea to a crime in any jurisdiction that relates adversely to the practice of nursing or to the ability to practice nursing.

(d) Employing fraud or deceit in procuring or attempting to procure a license to practice nursing, in filing any reports or completing client records, in representation of oneself to the board or public, in authenticating any report or records in the nurse's capacity as an ARNP, RN, LPN or LNA, or in submitting any information or record to the board.

(e) Unethical conduct including but not limited to conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health or safety of a client. Actual injury need not be established.

(f) If a nurse's license to practice nursing or a multi-state privilege or another health care related license or other credential has been denied, revoked, suspended, or restricted, or the licensee has been otherwise disciplined in this or any other state.

(g) Conduct including but not limited to failure or inability to perform nursing or nursing assistant practice as defined in this chapter, with reasonable skill and safety.

(h) Unprofessional conduct including but not limited to:

(1) A departure from or failure to conform to nursing standards, including improper management of client records.

(2) Delegating or accepting the delegation of a nursing function or a prescribed health function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective client care.

(3) Failure to supervise the performance of acts by any individual working at the nurse's delegation or assignment.

(4) Failure of a clinical nursing instructor to supervise student experiences.

(i) Failure of a chief administrative nurse to follow appropriate and recognized standards and guidelines in providing oversight of the nursing organization and nursing services of a health care delivery system.

(j) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a modified license under this act.

(k) Any nursing practice that may create unnecessary danger to a client's life, health, or safety. Actual injury to a client need not be established.

(l) Inability to practice safely, including demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness or as a result of any mental or physical condition.

(m) Actions or conduct that include, but are not limited to falsifying reports, client documentation, agency records or other essential health documents, failure to cooperate with a lawful investigation conducted by the board, failure to maintain professional boundaries with clients or family members, use of excessive force upon or mistreatment or abuse of any client, engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors or language or behaviors suggestive of same, or threatening or violent behavior in the workplace.

(n) Diversion or attempts to divert drugs or controlled substances.

(o) Failure of a licensee to comply with terms of any alternative program agreement made with the board.

(p) Other drug-related actions or conduct that include but are not limited to:

(1) Use of any controlled substance or any drug or device or alcoholic beverages to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use may impair his or her ability to conduct with safety to the public the practice of nursing.

(2) Falsification or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances.

(3) A positive drug screen for which there is no lawful prescription.

(q) Actions or conduct that include but are not limited to:

(1) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the practice of nursing.

(2) Violating a rule adopted by the board under RSA 541-A, an order of the board, a state or federal law relating to the practice of nursing, or a state or federal narcotics or controlled substance law.

(3) Practicing beyond the scope of practice as stated in this chapter, and failing to report violations of this chapter.

(r) Upon notification by the licensing authority of another jurisdiction that a licensee has been disciplined.

III. The board may refuse to renew or reinstate a license on disciplinary grounds, or take disciplinary action in any one or more of the following ways:

(a) By reprimand or by suspension, limitation, conditions, or probation of a licensee for a period of time as determined reasonable by the board.

(b) By revocation of a license.

(c) By requiring licensees to participate in educational or rehabilitative programs in the area or areas in which they have been found deficient or incompetent.

(d) By requiring the licensee to submit to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

(e) By requiring the person to practice under the direct supervision of an RN for a period of time specified by the board.

(f) By imposition, after notice and the opportunity for hearing, of fines not to exceed \$1,000 for each violation or, in the case of a continuing violation, \$100 for each day the violation continues.

IV. In cases involving imminent danger to public health, safety, or welfare, the board may order the immediate suspension of a license pending an adjudicative proceeding. The board shall commence this adjudicative proceeding not later than 10 working days after the date of the board order suspending the license. The licensee may waive the 10-day commencement requirement to allow for additional time to prepare for a hearing. If the licensee waives the requirement, the license shall remain suspended until the completion of the hearing. A record of the proceeding shall be made by a certified court reporter provided by the board. Unless expressly waived by the licensee, board failure to commence an adjudicative proceeding within 10 working days shall mean that the suspension order is automatically vacated. The board shall not again suspend the license for the same conduct which formed the basis of the vacated suspension without granting the licensee prior notice and an opportunity for an adjudicative proceeding.

V. Every individual, agency, facility, institution, or organization that employs licensed nursing personnel within the state shall report to the board within 30 days any action by a licensee that willfully violates any provision of paragraph II. The board shall have authority, after notice and the opportunity for hearing, to impose civil penalties of up to \$1,000 per violation upon persons found to have willfully violated the reporting requirements of this paragraph.

326-B:39 Investigations and Hearings.

I. The board shall investigate possible misconduct by licensees and other matters governed by the provisions of this chapter. Investigations shall be conducted with or without the issuance of a board order setting forth the general scope of the investigation. Board investigations and any information obtained by the board pursuant to such investigations shall be exempt from the public disclosure provisions of RSA 91-A, unless such information subsequently becomes part of a public disciplinary hearing. However, the board may disclose information acquired in an investigation to law enforcement or health licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

II. The board may appoint legal counsel, health care advisors, or other investigators to assist with any investigation and with adjudicative hearings.

III. The form taken by an investigation is a matter within the discretion of the board. The board may conduct investigations on an ex parte basis.

IV.(a) The board may administer oaths or affirmations, preserve testimony, and issue subpoenas for witnesses, documents, and things, relative to investigations or adjudicative hearings, except that subpoenas for records issued pursuant to paragraph V may be issued at any time.

(b) The board may serve a subpoena on any licensee by certified mail, but shall serve a subpoena on any other person in accordance with the procedures and the fee schedules established by the superior court.

(c) A person licensed by the board shall not be entitled to a witness fee or mileage expenses for travel within the state related to his or her appearance at a hearing or investigatory proceeding.

(d) In order to be valid, any subpoena issued by the board, except one issued to a licensee, shall be annotated "Fees guaranteed by the New Hampshire board of nursing."

(e) A minimum of 48 hours' notice shall be given for compliance with a subpoena issued under this paragraph.

V. The board may at any time subpoena a licensee's health care records, employment records, and nursing education academic records in the possession of its licensees, nursing education programs licensed by the board, or hospitals, and other health care providers and facilities regulated in this state, except that it may not subpoena quality assurance records of health facilities licensed under RSA 151. Subpoenas shall be served by certified mail or personal delivery to the address currently on file with the board in the case of delivery to a licensee. No witness or other fee shall be required. A minimum of 15 days' advance notice shall be allowed for complying with a subpoena issued under this paragraph.

VI. Complaints of licensee misconduct shall be in writing and shall be treated as petitions for the commencement of a disciplinary hearing. The board shall determine whether a complaint alleges misconduct sufficient to support disciplinary proceedings. If the board determines that it does, the board shall forward a copy of the complaint to the licensee complained against within 5 business days of its determination. If the board determines that it does not, the board shall send the complainant a written notice of dismissal of the complaint. Some or all of the allegations in a complaint may be consolidated with another complaint or with issues the board wishes to investigate or hear on its own motion. If an investigation of a complaint results in an offer of settlement by the licensee, the board may settle the allegations against the licensee without the consent of a complainant, provided that material facts are not in dispute.

VII. At any time during an investigation of a complaint, and without issuing a subpoena, the board may mail a copy of a complaint to the licensee named in the complaint, and may require in a written request that the licensee and the licensee's employer provide detailed and good faith written responses to allegations identified by the board and also provide copies of all records concerning any client identified in the complaint. The licensee and others receiving inquiries from the board shall respond within a reasonable time period of not less than 15 days as the board may specify. This procedure may also be used in connection with matters the board has undertaken to investigate on its own motion.

VIII. The board may hold adjudicative hearings concerning allegations of misconduct or other matters within the scope of this chapter. Such hearings shall be public proceedings. Any member of the board other than the public members, or any other qualified person appointed by the board, shall have authority to preside at such a hearing and to issue oaths or affirmations to witnesses.

IX. The board shall give the respondent and the complainant, if any, at least 15 days' written notice of the date, time, and place of a hearing, except as otherwise provided in this chapter. Such notice shall comply with RSA 541-A and include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the notice shall provide the complainant with a reasonable opportunity to intervene as a party. Such notice shall be sent by certified mail return receipt requested to the complainant and to the respondent at the address provided by respondent currently on file at the board offices. Notice mailed in compliance with this section shall be deemed served.

X. The board may at any time dispose of allegations in a complaint, investigation, or disciplinary hearing by settlement, default, or consent

order, by issuing an order of dismissal for failing to state a proper basis for disciplinary action, or by summary judgment order based upon undisputed material facts. In disciplinary hearings, the board may hold prehearing conferences which shall be exempt from the provisions of RSA 91-A, but any final disciplinary action or decision which occurs without holding a public hearing shall be publicly released at the time it is served upon the parties.

XI. Final disciplinary actions and other adjudicative decisions made by the board shall be in writing and served upon the parties. Such decisions shall not be released to the public until they are served upon the parties.

XII. Any person appearing at a board hearing or investigation may be represented by legal counsel or other representative, but the board shall have no obligation or authority to appoint or provide such representation.

XIII. The board shall hear any complaint not resolved at or prior to a preliminary hearing.

XIV. In the case of sanctions for discipline in another jurisdiction, the decision of the other jurisdiction's disciplinary authority may not be collaterally attacked and the board may impose any of the sanctions set forth in this chapter, but shall provide notice and an opportunity to be heard if it intends to impose sanctions above those imposed by the other jurisdiction.

326-B:40 Rehearing; Appeals.

I. Any person who has been refused a license by the board or has been disciplined by the board shall have the right to petition for a rehearing within 30 days after the original decision.

II. Appeals from a decision on rehearing shall be by appeal pursuant to RSA 541.

III. No sanction shall be stayed by the board during an appeal.

326-B:41 Injunctive Relief. The attorney general, the board of nursing, any citizen, or the prosecuting attorney of any county or municipality where the act occurs may maintain an action to enjoin a person not currently licensed to do so from practicing, or purporting to practice, nursing or nursing-related activities. The action to enjoin shall not replace any other civil, criminal, or regulatory remedy. An injunction without bond is available to the board.

326-B:42 Unlawful Acts. It shall be unlawful for any person or entity to:

I. Sell or fraudulently obtain or furnish any nursing diploma, license, or record, or to aid and abet in such an act.

II. Practice as a licensee when the license to do so has been revoked or suspended or when the license to do so has lapsed.

III. Use, in connection with the individual's name, any designation tending to imply licensure as an RN, an LPN, or an LNA unless so licensed.

IV. Represent or imply that the person or entity is conducting a nursing education program or a program for the education of nursing assistants which has been approved by the board when the program has not been so approved.

V. Disclose, solicit, or compile information regarding the contents of any licensing examinations relative to this chapter, except as authorized by the board.

326-B:43 Persons Licensed Under Previous Laws. Any person authorized to practice nursing by authority of this state as of the effective date of this section shall continue to be licensed under the provisions of this chapter and shall be eligible for license renewal pursuant to this chapter.

326-B:44 Exemptions. The provisions of this chapter shall not prohibit or limit:

I. The employment in federal government institutions and agencies of nurses who are members of federal agencies and are currently licensed in some state of the United States.

II. The practice of nursing by persons enrolled in nursing programs approved by the board when such practice is part of their program of study.

III. The furnishing of nursing assistance in an emergency.

IV. Nursing services by anyone when done in accordance with the practice of the religious principles or tenets of any well-recognized church or denomination which relies upon prayer or spiritual means alone for healing.

V. The practice of nursing in this state by any nurse currently licensed by another state engaged to accompany and care for a person passing through or temporarily residing in this state, during the period of one visit not to exceed 2 months.

VI. The administration of medications, by any person employed or under contract, to provide direct care to clients receiving community-based services pursuant to RSA 135-C or RSA 171-A, provided that persons delivering such care who administer medications shall have successfully completed a medication administration educational program conducted by an RN and approved by the board under rules adopted pursuant to RSA 541-A. The commissioner of health and human services, in consultation with the board, shall adopt rules under RSA 541-A establishing criteria for the administration of medications, and for the process of approving an RN to conduct the medication administration educational program.

VII. The practice of any nurse currently licensed in another state who is in this state on a non-routine basis to provide nursing consulting services.

326-B:45 Midwifery Not the Practice of Nursing. Midwives certified under RSA 326-D, and practicing midwifery as defined by RSA 326-D:2, V, shall not be construed as practicing nursing.

326-B:46 Direct Care in Community-Based Services. The administration of medications, by non-licensees to individuals receiving community-based services pursuant to RSA 135-C or RSA 171-A shall not be construed as practicing nursing.

326-B:47 Nurse Licensure Compact. The nurse licensure compact is adopted and entered into with all other jurisdictions that legally join the compact, which is substantially as follows:

ARTICLE I

Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

In this compact:

(a) "Adverse action" means a home or remote state action.

(b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) "Current significant investigative information" means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(j) "Party state" means any state that has adopted this compact.

(k) "Remote state" means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) "Remote state action" means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term state practice laws does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their states and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state

shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between 2 party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party State Nurse Licensing Boards
Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their states;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII

Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII

Compact Administration and Interchange of Information

(a) The head of the nurse licensing board, or his or her designee, of each party state shall be the administrator of this compact for his or her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI (d).

ARTICLE IX

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact are liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article does not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal, and Amendment

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal affects the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact may be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state or states involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) The decision of a majority of the arbitrators shall be final and binding.

2 Nursing Assistant Fund. Amend RSA 6:12, I(b)(24), to read as follows:

(24) Money received under RSA ~~[326-B:29]~~ **326-B:7**, which shall be credited to the board of nursing's nursing assistant fund.

3 Residential Care and Facility Licensing; Disciplinary Actions; Report to Board of Nursing Added. Amend RSA 151:6-b to read as follows:

151:6-b Report of Disciplinary Action. Every facility administrator, or designee, for any health care facility licensed under this chapter shall report to the board of medicine *or the board of nursing* any disciplinary or adverse action[;] *taken against a licensee of the board. Such report shall be made* within 30 days after such action is taken[; ~~including~~]. *Actions reported shall only involve misconduct sufficient to support disciplinary proceedings by the board and shall include all* situations in which allegations of misconduct are settled by voluntary resignation without adverse action[; ~~against a person licensed by the board~~].

4 Residential Care and Facility Licensing; Rules. Amend RSA 151:9, I(k) to read as follows:

(k) Procedures for reviewing documentation of the mandatory completion of a state approved program under RSA ~~[326-B:4-a]~~ **326-B** for assistants to nurses in facilities licensed under RSA 151:2, who may not assume the responsibility of the position of an assistant to nurses prior to completion of the appropriate course required by this chapter.

5 Privileged Communication. Amend RSA 316-A:27 to read as follows:
316-A:27 Privileged Communications. The confidential relations and communications between any person licensed under provisions of this chapter and such licensed person's patient are placed on the same basis as those provided by law between attorney and client, and, except as otherwise provided by law, no such doctor of chiropractic shall be required to disclose such privileged communications. Confidential relations and communications between a patient and any person working under the supervision of a doctor of chiropractic that are customary and necessary for diagnosis and treatment are privileged to the same extent as though those relations or communications were with such supervising doctor of chiropractic. This section shall not apply to disciplinary hearings or actions conducted under RSA 316-A:22, relative to the board of chiropractic examiners, RSA ~~[326-B:12]~~ **326-B**, relative to the board of nursing, RSA 151-A:11, relative to the board of examiners of nursing home administrators, or any other statutorily created medical occupational licensing board conducting disciplinary proceedings. This section shall not apply to hearings conducted pursuant to RSA 135-C:27-54.

6 Pharmacies; Definitions. Amend RSA 318:1, I-a to read as follows:
I-a. "Advanced registered nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B:10]~~ **326-B:19**.

7 Pharmacies; Possessing Prescription Drugs. Amend RSA 318:42, VII(b) to read as follows:

(b) The drugs appear on the current formulary approved pursuant to RSA ~~[326-B:10, H]~~ **326-B**.

8 Controlled Drug Act; Definitions. Amend RSA 318-B:1, I-b to read as follows:

I-b. "Advanced registered nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B:10]~~ **326-B:19**.

9 Respiratory Care Practice Act; Definitions. Amend RSA 326-E:1, V to read as follows:

V. "Nurse practitioner" means a person licensed to practice as an advanced registered nurse practitioner in this state pursuant to RSA ~~[326-B]~~ **326-B:19**.

10 Mental Health Practice; Definitions. Amend RSA 330-A:2, VIII to read as follows:

VIII. "Psychotherapist" means a psychologist, clinical social worker, pastoral psychotherapist, clinical mental health counselor, or marriage and family therapist licensed under this chapter who performs or purports to perform psychotherapy. This definition shall include psychiatrists licensed as physicians under RSA 329 and advanced registered nurse practitioners licensed under RSA ~~[326-B:10]~~ **326-B:19** as psychiatric nurse practitioners.

11 Mental Health Practice; Penalties. Amend RSA 330-A:23, I to read as follows:

I. Except as provided in RSA 330-A:34, it shall be unlawful for any person to be engaged in mental health practice unless that person is licensed by the board, working as a candidate under the direct supervision of a person licensed by the board, or engaged in the practice of other mental health services as an alternative provider as defined in RSA 330-A:2, I. The license or the registration of such person shall be current and valid. It shall be unlawful for any person to practice as or to refer to oneself as a psychologist, a pastoral psychotherapist, a clinical social

worker, a clinical mental health counselor, or a marriage and family therapist, or use the word "psychotherapist," or any variation thereof, in such person's title unless that person is licensed by the board or working as a candidate under the direct supervision of a person licensed by the board. Psychiatrists licensed under RSA 329 and psychiatric nurse practitioners licensed under RSA [326-B:10] **326-B:19** may refer to themselves as psychotherapists.

12 Mental Health Practice; Persons Exempted. Amend RSA 330-A:34, I(e) to read as follows:

(e) The psychotherapy activities and services of physicians licensed under RSA 329, and advanced registered nurse practitioners, licensed under RSA [326-B:10] **326-B:19**.

13 Insurance; Coverage for Mental or Nervous Conditions. Amend RSA 415:18-a, V(d) to read as follows:

(d) "Psychiatric/mental health advanced registered nurse practitioner" means an individual who is licensed as an advanced registered nurse practitioner in psychiatric mental health nursing under RSA [326-B:10] **326-B:19**, who is defined by and whose scope of practice is described under the rules adopted pursuant to RSA 326-B, and who is a licensed registered nurse, educationally prepared in nursing at a minimum of the master's level, and certified in the specialty by a recognized national certifying agency, such as the American Nurses Credentialing Center.

14 Effective Date. This act shall take effect July 1, 2005.

SENATOR KENNEY: Thank you, Mr. President. I move Senate Bill 170 ought to pass with amendment. Senate Bill 170 as amended makes three specific changes from last session's Senate Bill 199 versus the scope of practice of the Aide or NPs has been written in general practice categories. The scope of practice in nursing is ever-changing and it is established at the national level. The nurses of New Hampshire must be able to keep up with the current standards of practice. The other two changes include duty to warn of violent acts and duty to inform of sexual misconduct in which the board wishes to retain the language in the current statute because it stood the test of time. The amendment also contains the Nurse Compact language that is needed to have New Hampshire accepted into the Nurse Compact. The committee unanimously asks your support to ought to pass with the amendment motion. If I may, Mr. President, I would also like to thank Mike Williams, our legislative drafter for working diligently with all of the groups involved to get the appropriate language that everybody would agree to. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I also want to thank the prime sponsor of this bill, Senator Kenney, for bringing this forward. As you know, last session we had a bill which established the Nurse Licensure Compact. We did a lot of negotiating in that process to satisfy, not only the language of the Nursing Board, but also...the Board of Nursing I should say, and also the Nurses Association, and also tied in the Compact language as well, where all three entities agreed that nurses should have the privilege okay, to get these additional jobs as well as to improve their status in the state. Well, over time, some of these issues had to be readdressed, issues we thought were already done and taken care of. But they came back up again. So this amendment, the amendment to this bill, is rewrote and brought in and corrected all those errors or things that were forgotten to put in the bill, and finally get in there and satisfy all entities who were interested in this. The patients of the state of New Hampshire are the ones who really are the winners here, for they have now more nurses on board and these nurses can

speak to them on a daily basis to help them along. It also assists the Health Dialogue, which is a company in Manchester which has 350 employees who are all nurses, who work and deal with patients across the country, including our own state. They perform services that normally would be performed by an office staff or persons that weren't, in some cases, duly qualified. But we put that one to bed as they say. It is now only duly qualified nurses have that ability to speak to people, patients and to make sure that they have the right instructions and do the right things. So I urge that we pass this bill, Mr. President, as amended. I want to thank everyone who has worked on this. It's been an experience, okay, which has gone quite long. I want to thank again, Joe Kenney, as well as Jane Fairchild and Margaret Walker, Bob Bess among any others who were all included in the final decision here. So, Mr. President, I urge that we pass this bill as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 34-FN, relative to reimbursement rates for child care. Finance Committee. Inexpedient to legislate, Vote 6-1. Senator Morse for the committee.

MOTION TO TABLE

Senator Morse moved to have SB 34 laid on the table.

Adopted.

LAID ON THE TABLE

SB 34-FN, relative to reimbursement rates for child care.

SB 38-FN, relative to school building aid for certain receiving districts. Finance Committee. Ought to pass, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 38-FN ought to pass. Under this bill, school districts receiving tuition students from other towns on a contract basis would be treated the same as multi-town school districts for the purpose of computing building aid on related construction projects. For the purposes of school building aid, Manchester schools do not fall under the same category in statute as the cooperative and multi-district schools and are only eligible for 30 percent reimbursement. This legislation gives Manchester the same rights as other towns that enter into multi-district agreements. The bill creates equality for building aid by allowing all multi-district agreements to be eligible for similar building aid. The Finance Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 79, relative to the governance of the regional community-technical colleges. Finance Committee. Ought to pass, Vote 7-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 79 ought to pass. Senate Bill 79 will enable the New Hampshire Community Technical College System to better serve their students. This

bill will allow each campus to have their own president. Currently, each campus, except Concord, has to share a president. For example, the president in Nashua shares a presidency with Claremont and also with the new development in Keene. That's a pretty tough trip. It will also allow for an increase in membership on the board of trustees, which will allow the system to have more diverse minds shaping the system. I love that quote, "more diverse minds shaping the system". We love diversity. Having a president at each campus will increase enrollment, thereby offsetting any additional costs incurred. In addition, the campus will be better managed, allowing for cost savings. The Finance Committee unanimously voted that this bill out ought to pass and we ask for your support. Thank you, Mr. President.

Adopted.

Ordered to third reading.

SB 101-FN, relative to developmentally disabled services for persons under 21 years of age. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator D'Allesandro for the committee.

Senate Finance

March 30, 2005

2005-0973s

05/10

Amendment to SB 101-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph Eligibility for Residential Services. Amend RSA 171-A:6 by inserting after paragraph V the following new paragraph:

VI. A person age 18 through age 21 who has received services pursuant to RSA 186-C, or the person's legal guardian if any, at any time may make application under this section for residential services for which the person is not eligible pursuant to RSA 186-C. Eligibility and entry for such person shall be subject to the requirements of this chapter. Under no circumstance shall the department or area agency be responsible for special education services under RSA 186-C.

2 Effective Date. This act shall take effect July 1, 2005.

2005-0973s

AMENDED ANALYSIS

This bill permits a person between 18 and 21 with a developmental disability who received special education services to apply for residential services from an area agency.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 101-FN ought to pass with amendment. The bill, as amended, will allow individuals between the ages of 18 and 21 with a developmental disability to apply for residential services. For individuals with disabilities under the age of 18, DCYF is available for residential services; while area agencies are available for persons over the age of 21. This legislation closes the gap for those between the ages of 18 and 21. The amendment makes it clear that individuals between the ages of 18 and 21 will be added to the waitlist and, as amended, the bill will have no fiscal impact. The Finance Committee asks your support for the motion of ought to pass with amendment. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 125-FN, repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism. Finance Committee. Ought to pass with amendment, Vote 5-1. Senator Clegg for the committee.

Senate Finance

March 28, 2005

2005-0972s

01/04

Amendment to SB 125-FN

Amend RSA 420-G:4, I(e) as inserted by section 5 of the bill by inserting after subparagraph (8) the following new subparagraph:

(9) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the total premium rate by more than 25 percent of the rate that was charged in the preceding year including utilization trend or, if the policy has been in force for longer than one year, by more than 50 percent of the rate including utilization trend that was charged by that carrier in the year prior to the year immediately preceding renewal.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 125 ought to pass with amendment. As you may remember from two weeks ago, Senate Bill 125 removes health status as a rating factor in small group health insurance and returns New Hampshire to a community rating system. As we know from recent experience, any time you change rating factors, there are going to be winners and there are going to be losers. The Finance Committee added an amendment which limits rate increases to 25 percent, plus utilization trend for one year and 50 percent plus trend over two years. The language of the Finance Committee amendment may look familiar to many of you and it should. It's the same language that the Senate adopted as an amendment to Senate Bill 419 last year. The amendment passed that year 24-0. According to the Insurance Department, over 50 percent of businesses in the small group market will receive rate increases of between 30 and 60 percent from 125. And 17 percent of the state's smallest businesses, those companies with between 1 and 9 employees, will experience rate increases between 50 and 60 percent. The Finance Committee will help protect these small businesses from yet another round of rate shock. The Finance Committee asks for your support of this important amendment as a way to provide some much needed stability to small businesses in the face of constantly changing insurance laws. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I stand in opposition to the committee amendment. Senator Clegg is right. We did put an amendment on two bills last year to prevent the increases. I was the proud author of that amendment when I first brought it forward because I understood that there were gyrations happening just as the rest of the 23 members of this body that voted for that amendment. Nobody talked when we passed 110, that groups from 1 to 5 or 1 to 10 were going to see 70 percent increases. I think if any of us would have told that the rate ban would be 1 to 12 or for the lowest rate premium in the state of New Hamp-

shire being \$100 and the highest rate being \$1,200, I don't think any of us would have voted for 110. So, with incorporation of Senate Clegg or that committee's amendment, I am going to be offering up an amendment that changes some of the definitions, brings some clarity to 125 because there is no question that the insurance topic is a very difficult one. So I urge my members to vote down the ought to pass amendment and vote and wait for the amendment that is coming before you that also has a 20 percent cap so that those 70 percent gyrations don't happen. Thank you, Mr. President.

Amendment failed.

Senator Gatsas offered a floor amendment.

Sen. Gallus, Dist. 1

Sen. Burling, Dist. 5

Sen. Green, Dist. 6

Sen. Roberge, Dist. 9

Sen. Gottesman, Dist. 12

Sen. Foster, Dist. 13

Sen. Larsen, Dist. 15

Sen. Gatsas, Dist. 16

Sen. Barnes, Dist. 17

Sen. D'Allesandro, Dist. 20

Sen. Estabrook, Dist. 21

Sen. Hassan, Dist. 23

Sen. Fuller Clark, Dist. 24

April 7, 2005

2005-1049s

01/09

Floor Amendment to SB 125-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Case characteristics" means demographic or other relevant characteristics of a small employer group that may be considered by the health carrier in the determination of premium rates for that group.

2 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph II the following new paragraph:

II-a. "Composite billing" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's family composition.

3 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph VII the following new paragraph:

VII-a. "Family composition" means health plan membership type, including: enrollee only; enrollee and spouse; enrollee and children; enrollee, spouse, and children; and other similar membership types.

4 Definition Changed. Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the ~~[base]~~ **market** rate through the application of **plan** factors that reflect actuarially demonstrated differences in expected utilization ~~[or cost]~~ **and health care costs** attributable to differences in the coverage design and/or the provider contracts that support the coverage **and by including provisions for administrative costs and loads. The health coverage plan rate is periodically adjusted to reflect expected changes in the market rate, utilization, health care costs, administrative costs, and loads.**

5 Definition Added. Amend RSA 420-G:2, XII-a to read as follows:

XII-a. "**List billing**" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's attained age and the enrolled employee's family composition.

XII-b. "Loss information" means the aggregate claims experience and shall include, but not be limited to, the number of covered lives, the amount of premium received, the amount of total claims paid, and the claims loss ratio. "Loss information" shall not include any information or data pertaining to the medical diagnosis, treatment, or health status that identifies an individual covered under the group contract or policy. Catastrophic claim information shall be provided as long as the provision of this information would not compromise any covered individual's privacy.

6 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XII-b the following new paragraph:

XII-c. "Market rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans the carrier writes and maintains in a market, including the nongroup individual health insurance market and, separately, the small employer group health insurance market, and which is periodically adjusted by the carrier to reflect changes in actual or anticipated claims.

7 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XIV-a the following new paragraph:

XIV-b. "Premium rate" means the rates used by a carrier to calculate the premium. For group coverage, premium rates shall be expressed as a rate per enrolled employee

8 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XV the following new paragraph:

XV-a. "Rating period" means the time period for which the premium rate charged by a health carrier to an individual or a small employer for a health benefit plan is in effect.

9 Premium Rates. Amend RSA 420-G:4, I(a) to read as follows:

(a) All ~~[premiums]~~ **premium rates** charged shall be guaranteed for a rating period of at least 12 months, ~~[unless otherwise allowed by the commissioner]~~ **and shall not be changed for any reason, including but not limited to a change in the group's case characteristics.**

10 Small Group Insurance; Premium Rates. Amend RSA 420-G:4, I(e) and (f) to read as follows:

(e) In establishing the premium charged, health carriers ~~[providing]~~ **offering** coverage to small employers shall calculate ~~[a rate]~~ **premium rates** that ~~[is]~~ **are** derived from the health coverage plan rate ~~[through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location,~~

and health status] *by making adjustments to reflect one or more case characteristics*. Such [factors] *adjustments from the health coverage plan rate* may be [utilized] *made* only in accordance with the following limitations:

(1) ~~Carriers may use the attained age of covered persons as a rating factor. However, the maximum premium differential for age as determined by ratio shall be 4 to 1 beginning with age 19].~~ *In establishing the premium rates, health carriers offering coverage to small employers may use only age, group size, and industry classification as case characteristics. No consideration shall be given to health status, claim experience, duration of coverage, geographic location, or any other characteristic of the group.*

(2) Carriers [modifying such average premium] *making adjustments from the health coverage plan rate* for age may do so only by using the following age brackets:

0 - 18
19 - 24
25 - 29
30 - 34
35 - 39
40 - 44
45 - 49
50 - 54
55 - 59
60 - 64
65 +

(3) ~~Carriers may use group size as a rating factor. However, the highest factor based on group size shall not exceed the lowest factor based on group size by more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor.~~

(4) Carriers may use the small employer group's industry classification as a rating factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than 20 percent.

(5) Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.

(6) Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:

(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.

(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.

(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.

(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating

factor for attained age of covered persons.] *The maximum premium rate differential after adjusting for all case characteristics as determined by ratio shall be 3.5 to 1. This limitation shall not apply for determining premium rates for covered persons whose attained age is less than 19.*

(4) In establishing the premium rates, health carriers offering coverage to small employers may make further adjustments based on family composition.

(5) The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group as well as family composition. No small employer health carrier shall inquire regarding health status or claims experience of the small employer or its employees or dependents until after the premium rates have been agreed upon by the carrier and the employer.

(6) Carriers may calculate premium rates using either list billing or composite billing. Carriers shall use the same billing method in all succeeding rating periods unless the small employer agrees to allow the carrier to change the methodology.

(7) The percentage increase in the premium rates used by a health carrier for a new rating period shall not exceed 20 percent of the premium rates used by that carrier in the preceding rating period. Such rate increase limitation shall not include any premium rate increase that is based on changes in the health coverage plan rate.

(f) Each rating factor that a carrier chooses to utilize *in the individual market* shall be reflective of claim cost variations that correlate with that factor independently of claim cost variations that correlate with any of the other allowable factors.

11 Medical Underwriting. Amend RSA 420-G:5, I to read as follows:

I. Health carriers providing health coverage for individuals [~~or small employer groups~~] may perform medical underwriting, including the use of health statements or screenings or the use of prior claims history, to the extent necessary to establish or modify premium rates as provided in RSA 420-G:4. The commissioner may allow group carriers to use standardized health statements. *Small group carriers may use the standard reinsurance underwriting form for their reinsurance ceding decisions to the New Hampshire small employer health reinsurance pool, established in RSA 420-K:2, after premium prices have been agreed upon by the carrier and the small employer.*

12 New Chapter; Small Employer Health Reinsurance Pool. Amend RSA by inserting after chapter 420-J the following new chapter:

CHAPTER 420-K

SMALL EMPLOYER HEALTH REINSURANCE POOL

420-K:1 Definitions. In this chapter:

I. "Assessment" means the liability of the member insurer to the reinsurance pool.

II. "Board" means the board of directors of the small employer health reinsurance pool.

III. "Commissioner" means the insurance commissioner.

IV. "Covered lives" means "covered lives" as defined in RSA 404-G:2, V.

V. "Health carrier" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health insurance in New Hampshire.

VI. "Health insurance" means "health insurance" as defined in RSA 404-G:2, VII.

VII. "Plan of operation" means the plan of operation of the small employer health reinsurance pool, including articles, bylaws and operating rules, procedures and policies approved by the commissioner and adopted by the pool.

VIII. "Pool" means the small employer health reinsurance pool.

IX. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

X. "Standard health benefit plan" means a health benefit plan developed pursuant to RSA 420-K:4, I.

420-K:2 Establishment of the Pool.

I. There is established a nonprofit entity to be known as the "New Hampshire small employer health reinsurance pool." All health carriers, writers of health insurance, and other insurers issuing or maintaining health insurance in this state shall be members of the pool.

II. On or before July 1, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by July 15, 2005. The members shall select the initial board, subject to approval by the commissioner. The board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than one board member representing any one member company. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The vote shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of the members of the board shall be small employer health carriers. At least one member shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner, or designee, shall be an ex-officio member of the board. In approving selection of the board, the commissioner shall assure that all members are fairly represented. The membership of all boards subsequent to the initial board shall be approved by the commissioner and shall, to the extent possible, reflect the same distribution of representation as is described in this paragraph.

III. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

IV. Within 60 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of paragraph VI of this section. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments no later than October 1, 2005. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner.

V. The board shall select reinsurance pool administrators through a competitive bidding process to administer the pool. The board shall evaluate bids submitted based on criteria established by the board. Each month, total payments to administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the reinsurance pool has any potential claims liability.

VI. The plan of operation shall establish procedures for:

(a) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(b) Filling vacancies on the board, subject to the approval of the commissioner.

(c) Selecting an administrator and setting forth the powers and duties of the administrator.

(d) Reinsuring risks in accordance with the provisions of this chapter.

(e) Collecting assessments from all members to provide for claims reinsured by the pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(f) Any additional matters at the discretion of the board.

420-K:3 Powers of the Pool.

I. The pool shall have the general powers and authority granted under the laws of New Hampshire to insurance companies licensed to transact health insurance.

II. In addition, the pool shall have the specific authority to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

(c) Take such legal action as necessary to avoid the payment of improper claims against the pool.

(d) Define the array of health coverage products for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter.

(e) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the pool.

(f) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the pool.

(g) Assess members in accordance with the provisions of this chapter, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

(h) Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool.

(i) Borrow money to effectuate the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for insurers and may be carried as admitted assets.

(j) Develop a standard health benefit plan.

420-K:4 Standard Health Benefit Plan.**I. The board shall:**

(a) Develop a standard health benefit plan which shall contain benefit and cost sharing levels that reflect the health coverages most commonly sold by small employer carriers in the state.

(b) Develop base reinsurance premium rates for the standard health benefit plan. The base reinsurance premium rates shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan. The base premium rates shall be subject to approval of the commissioner.

(c) Establish a methodology for determining premium rates to be charged by the pool to reinsure small employer groups and individuals. The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in establishing premium rates.

II. The standard health benefit plan, base reinsurance premium rates and the rating methodology shall be submitted to the commissioner for approval within 45 days after the appointment of the board and shall subsequently be revised as necessary and appropriate.

420-K:5 Eligibility, Coverage, and Rates. Beginning January 1, 2006, members may reinsure with the pool health coverage provided to small employers as follows:

I. The pool shall reinsure the level of coverage provided up to, but not exceeding, the level of coverage provided in the standard health benefit plan or the actuarial equivalent thereof as defined and authorized by the board.

II. The pool shall not reimburse a ceding carrier with respect to claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for such employee or dependent of at least \$5,000 in a calendar year for benefits covered by the standard health benefit plan. The amount of the deductible shall be periodically reviewed by the board and may be adjusted upward as determined by the board.

III. A member may reinsure an entire small employer group within a period of 60 days following the small employer's health insurance policy issue or renewal date.

IV. A member may reinsure an eligible employee or dependent of a small employer group within a period of 60 days following the small employer's health insurance policy issue or renewal date.

V. A member may reinsure a newly eligible employee or dependent of a small employer group within a period of 60 days following the commencement of his or her coverage.

VI. Reinsurance coverage may be terminated for each reinsured employee or dependent on any plan anniversary.

VII. Reinsurance of newborn dependents shall be allowed only if the mother of any such dependent is reinsured as of the date of birth of such child, and all newborn dependents of reinsured persons shall be automatically reinsured as of their date of birth.

VIII. Notwithstanding the provisions of paragraphs III and IV:

(a) Coverage for eligible employees and their dependents provided under a group policy covering 2 or more small employers shall not be eligible for reinsurance when such coverage is discontinued and replaced by a group policy of another carrier covering 2 or more small employers, unless coverage for such eligible employees or dependents was reinsured by the prior carrier; and

(b) At the time coverage is assumed for such group by a succeeding carrier, such carrier shall notify the pool of its intention to provide coverage for such group and shall identify the employees and dependents whose coverage will continue to be reinsured. The time limitations for providing such notice shall be established by the pool.

IX. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged for reinsuring small employers and individuals. The methodology shall include a system for classification of small employers that reflects the way case characteristics are commonly used by small employer carriers in the state. Pool reinsurance premiums shall be established at the following percentages of the base reinsurance premium rate established by the pool for that classification of small employers with similar case characteristics:

(a) An entire small employer group consisting of 2 or more employees may be reinsured for a rate that is 150 percent of the applicable base reinsurance premium rate for the group established pursuant to RSA 420-K:4, II; and

(b) An eligible employee or dependent may be reinsured for a rate that is 500 percent of the applicable base reinsurance premium rate for the individual established pursuant to RSA 420-K:4, II.

X. On or before December 1, 2005, the board shall establish, subject to the approval of the commissioner, a standard reinsurance underwriting form for use by small employer carriers in ceding risks to the pool. The form may be amended from time to time as the board deems necessary, subject to the approval of the commissioner.

420-K:6 Assessments.

I. Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(a) Each member's assessment for the reinsurance pool shall be based on its number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate, which shall be:

(1) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;

(2) Established no later than November 1 in the current fiscal year; and

(3) Anticipated to be sufficient to meet the pool's funding needs.

(b) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.

(1) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay the reinsurance pool's expense in a timely manner.

(2) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.

(c) The board shall impose and collect assessments on members of the pool.

(d) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

II. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

III. The board may defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this chapter. The member insurer receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.

420-K:7 Immunity and Indemnification.

I. Neither the participation in the pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action against the pool or any of its members.

II. Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the program against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this chapter and such expenses shall be paid by the pool established in this chapter.

13 Repeal. RSA 420-G:4, I(e)(7), relative to increasing the premium rate for small employers at successive rating periods, is repealed.

14 New Hampshire Small Employer Health Reinsurance Pool; Ceding at Renewal Restricted. Amend RSA 420-K:5, III and IV to read as follows:

III. A member may reinsure an entire small employer group within a period of 60 days following the small employer's health insurance policy issue [~~or renewal~~] date.

IV. A member may reinsure an eligible employee or dependent of a small employer group:

(a) Within a period of 60 days following the small employer's health insurance policy issue [~~or renewal~~] date; *or*

(b) *On the first plan anniversary after the coverage has been in effect for a period of 3 years, and every third plan anniversary thereafter; provided, that reinsurance pursuant to this subparagraph shall only be permitted with respect to eligible employees and their dependents of a small employer which has no more than 5 eligible employees as of the applicable anniversary.*

15 Reference Change. Amend RSA 420-G:4, I(b) to read as follows:

(b) ~~[Base rate]~~ **Market rate** shall be established by each health carrier for all of its health coverages offered to individuals and, separately, for all of its health coverages offered to small employers.

16 Effective Date.

I. Section 12 of this act shall take effect July 1, 2005.

II. Sections 13 and 14 of this act shall take effect January 1, 2007.

III. The remainder of this act shall take effect January 1, 2006.

2005-1049s

AMENDED ANALYSIS

This bill makes certain changes in the small employer health insurance law, including:

I. Repealing health status and geographic location as rating factors for small group health insurance.

II. Adding a definition of case characteristics and certain other definitions.

III. Clarifying overall premium rate variability in the small group health insurance market.

IV. Clarifying the small group health insurance law regarding premium rates for small employer groups with similar case characteristics.

V. Establishing the New Hampshire small employer health reinsurance pool to offer pool coverage to eligible employees of small employers.

SENATOR GATSAS: Thank you, Mr. President. There is an amendment coming before you that takes the 125 that passed this body 17 to 7 and makes some technical corrections to it so that there is clarity and there is no confusion when we talk about multiplicative additive and we talk about a base rate and a market rate; whether it is composite listing or a list bill rating. I think those are factors that are important because I think that we can all sit here and the Insurance Department can understand what those terms mean, but the small employer is totally left in the dark. So when you say to them, we passed a piece of legislation, those terms aren't listed and they aren't defined anywhere. I think it's important that we understand that the multiplicative additive version that I had in the first piece of legislation is because I didn't want insurance companies having the ability to take case characteristics and compound them rather than just be an additive. So we took that case characteristics and we left them in place, saying that the things that you could rate for were age, group size and industry. However, we changed it and said that its a band of 3-1/2 to 1. So again, what that means is the lowest rate in the state for an identical plan would be \$100 and the highest rate would be \$350. So the band of 3-1/2 to 1 would be there and it would erase the 12 to 1 band that 110 had. It limits the premium renewal at 20 percent. Senator Clegg is right, we don't want to see gyrations. I took his advice as we tried to do last year in putting some caps in, but that failed. He had a 25 and 50. I think with allowing the gyrations not to happen, putting the 20 percent cap in. What that means is, is certainly what we are concerned with as we didn't protect the people that went up 70 percent. This is for the people that got 70 percent discounts, that they can only go up at 20 percent. So it is the people that have already enjoyed discounts and we're capping them at rate of increase that they can see. The reinsurance pool basically stays the same. There is no major changes other than wording changes so that people will understand how the reinsurance pool works. Mostly this amendment, I can thank my colleague Senator Hassan, and also the Insurance Department, because

they worked through it, got us to a position that at least they understood what the policy was that we wanted, and we could move it forward so the small employer has the ability. Now we are going to hear that the insurance companies in this state are going to leave. Well, I would say to you that, when we talk about competition, competition in the state of New Hampshire first starts with what an insurance company gets for a discount rate from hospitals. So to compete and say that the insurance companies are going to leave...some insurance companies get a 20, 30, 40 percent discount when they have hospitals on line. A new insurance coming into the state of New Hampshire is not going to get the same discounted rate 'cause their size is not the same. This allows insurance companies to have the ability, if they do come to the state of New Hampshire, to have a reinsurance pool of where they can cede those lives. That if they do take a small group and there is a sick person, they have the ability to cede that life to a reinsurance pool. So with the changes we made in definitions, and the band change to make sure it was a 3-1/2 to 1, and adding a cap that Senator Clegg had suggested at 20 percent on premium rate, I think now we have a piece of legislation that we can move forward, and hopefully bring the House so that we do get some reform in health insurance. Thank you, Mr. President.

SENATOR BOYCE: I don't want to have my remarks be too long. I just wanted to point out that, about ten years ago when Senate Bill 711 was before this chamber, I went back and I read the remarks from that Journal. At that time, that bill was...the opponents of that bill were saying that it would drive competition out of the state, that it would cause rates to triple and that we would end up with basically two insurers in the state, and that rates would go through the roof. Well, I don't know if that was self-fulfilling prophecy, but it was true. The result of that bill was that rates went through the roof. All competition left the state. Now a couple of years ago we had Senate Bill 110. During the discussion on that, we were told that it would correct some of the things that were wrong with what happened in Senate Bill 711 way back and that competition would return to the state. Well, the result of 110 is that competition has returned to the state. We now no longer are under the rule of two major insurance companies. We have several. Now, after Senate Bill 110 was passed, I believe that the two major players that enjoyed their, I guess it is a biopoly when there is two, it is not monopoly. But they had a biopoly and they enjoyed that status and wanted to return to it. They looked out at what they could do which would engineer the return of that biopoly situation. They wanted to drive the competition back out. So they have control over a lot of things. They have control over the rates that they charge their own customers. And, of all the horror stories that I have heard after Senate Bill 110, I've not heard a single horror story that came from any other insurance company. All of the insurance horror stories came from these two companies that enjoyed this biopoly and want to go back to it. I believe that this entire debate has been based upon the actions of those two companies. Now we have been told that, if this bill passes, those new companies that have come back to the state will go away and we will end up with the same biopoly that was giving us 30-40 percent increases every year. Yes, some people may have had 70 percent increases. Some people had some decreases. But every year since 711 passed, we have had double digit and 30-40 percent increases every year in health care premiums. We will go back to that. This blip with 110, I believe, was caused intentionally by the companies that want to drive the competition back out of the state. It is in their interest to

drive the competition back out because then they make all the profit and their executives can have their \$100 million a year retirement plans and things. That's what this is about. This is about driving competition back out. We voted, this chamber voted resoundingly to pass Senate Bill 111 when it passed. I am dyslexic and have trouble with numbers. Whatever the bill was that we passed a couple of years ago, should stand. We should allow it to continue. Competition is just starting. Competition will bring some sanity to these prices. But if we pass this bill, that competition will go away and we will go back to where we were, and we will see every year, 35-45-50 percent increases in rates. It will never end because we will have no competition. Competition is what causes things to be better in these situations. There will be no competition. We will be back to where we were when this was passed about 10-12 years ago.

SENATOR GATSAS: Senator Boyce, can you give me a percentage 11 years ago or 10 years ago, on the...let me start again. The percentage of employees that were insured by those competitors before they left on 711, can you tell me what percentage of the base that was and what percentage of the base is that those new carriers have today?

SENATOR BOYCE: No, but I can tell you that the percentage of the base that they had was something, and the percentage of the base that these new carriers have is something and that is competition. The competition is something that was missing for those years in between. Without competition there is no impetus for the company to lower their rates or have lower increases every year.

SENATOR GATSAS: Senator, would you believe that this bill allows only the companies to increase their rates by utilization and trend?

SENATOR BOYCE: I believe that I have been told that, if this bill passes, we will not have the competition that we worked hard the last couple of years to get. I believe that competition will restrain the rates. I don't believe this legislation will do what its intended...well, I actually believe that there are some who intend that this pass for the intent purpose of driving out competition. I think that is what is behind some of the outside people that are pushing for this, and I think that is where we will go. We will lose the competition, the little bit that we gained and what we hope to gain in the future, will be gone if we pass this bill.

SENATOR GATSAS: Senator Boyce, where do you hear these allegations that somebody has sponsored a piece of legislation that is going to absolutely force out competition because that sounds like an allegation?

SENATOR BOYCE: No. I am just saying that the outside efforts that are being pushed on the outside of this chamber, the pressure is coming from people who want to drive out competition. That is where the pressure is coming from. I am not saying that anybody introduced legislation on any ill will. But I believe that the pressure to do this is coming from people who will benefit from lack of competition. I believe that is the entire purpose for them pushing for this bill. I believe they truly understand that the competition will go away if this bill passes, and that is what they want.

SENATOR GATSAS: Thank you.

SENATOR HASSAN: Thank you, Mr. President. I just want to clarify for the record. I think that there has been a false dichotomy just now, that we either have to support what some of us know as the old 711 adjusted community rating or Senate Bill 110 which was passed two years ago.

Senate Bill 125 with this floor amendment actually moves us further to do neither. It takes the best of 711, which was spreading risks in an adjusted way throughout the community, which we have heard resoundingly from New Hampshire residents that they understand the need to do to help take care of their sicker friends and neighbors, and it also establishes a reinsurance pool, which was not present during the old adjusted community rating system, to attract competition and make it easier for new competitors to take groups that have some high risk cases in them. So this is a movement forward that takes the best of 711 and the good intentions of 110 to increase competition and accomplishes that. I also want to note for the record, that the consolidation of the insurance industry in the late '90s and early 2000 was a national trend. It did not just happen here in New Hampshire. It was not the result of adjusted community rating, and finally, if you want a horror story from somebody who did try to get insurance from a new competitor in this state, we have it. After a New Hampshire resident presented his case of an increase from about \$1,200 per month to \$2,200 a month under 110, this was for himself and his wife, he was encouraged by the oversight committee of SB 110 to go get quotes for some of the new competitors in New Hampshire who had come in since 110. He went to a smaller new competitor and was quoted a rate of \$3,300. That is not a bargain. That is not what competition is supposed to do. This bill will in fact make it possible for true competitors who truly want to insure in the small group market to do so. We urge your support for Senate Bill 125 with this floor amendment. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. I will be very brief because I can count. The same names are on this amendment that were presented to me five minutes before the hearing on this senate bill, and the same thing happened today. I just think that I would like to remind everyone that I don't think this is the way to pass legislation. You will recall that we had an all-day hearing scheduled and the amendment came in on 125 after three people had testified before I, as Chairman of the Insurance, saw the amendment. This morning, I hope all of you understand this amendment because it is 17 or 18 pages long, and we have had 20 minutes to review it. So I hope everybody really understands what they are voting on. Let me just say if I may, Mr. President, as Chairman of Insurance, I have in writing or I have heard in testimony, that the companies who've come in when 110 was passed, will leave. Trademark has already written a letter that if this passes they will not renew. The other companies did indeed testify, although some of you were not there because you had already signed the amendment and you didn't hear the evidence, but they testified that they will leave. So please believe me that they have testified and they have put in black and white that they will leave. I will echo everything that Senator Boyce said and I'm not going to repeat it. The problem that I have with this is the community rating. I want to explain to you that we are the only second state that has community rating in a pool, the other being Connecticut at which we have tried to copy or have copied. In my opinion, it is not fair. A couple of you who sit on insurance, I have heard you say after hearing testimony, "I think that's criminal." Do you remember that? Some of the actions of these companies. And, by passing this bill, and if, as I predict, the companies leave, those companies, or that company that you think borders on criminal, will be a monopoly. That's what is going to happen if everybody leaves, which I think they will. Now everything I am giving you is an opinion. All of you that are passing this bill are going

to have to wait and see. My theory is that community rating is a pool. I think this has to be said. Community rating is a pool. Community rating is higher rates because you don't know who you are insuring. You don't know the health status of the group that you are insuring. So what we are going to allow in this is we are going to allow A Company or B Company to get a higher rate because of community rating. They are going to take in a bigger premium, and then they will say, oh, now we are going to get rid of the sick ones. They are going to keep their high premium and they are going to put their ill, sick people in the pool. That's what is going to happen. No matter what happens with this bill, that company that you don't like in insurance, is going to make bigger bucks than they made before, because they are going to keep their high premium and get rid of the ones that are going to cost them claim money. Thank you.

SENATOR GATSAS: Senator Flanders, would you believe that Senate Bill 110 again was a process of hoping for competition? But if anybody would have told us that the small employer between 1 and 50, which is 85 percent of the employers in the state of New Hampshire, and between 1 and 10 is 65 percent, would you believe that we would have never voted for 110 if we knew that some of those companies were going to see 70 and 80 percent increases?

SENATOR FLANDERS: We did not know that and that is exactly what can happen with this bill, Senator is we don't know what is going to happen with this bill either. But we also had people who reduced 25 to 35 percent from the groups.

SENATOR GATSAS: But, Senator Flanders, wouldn't you agree that, when you talk about, in your experience, obviously, being a professional in the industry, that if you are limiting utilization and trend, utilization and trend is a much different situation and a 3.5 to 1 band, verses a 12 to 1 band, with what we did with 110? Don't you think this controls the costs a little bit differently?

SENATOR FLANDERS: My answer will be if that is going to work, then why do we need the pool?

SENATOR GATSAS: Is that a question to a question? Can I answer, Mr. President?

SENATOR FLANDERS: Let me say right now, you and I are never going to agree on this, so don't come back to me and say, "Do you agree Senator Flanders", 'cause no, I don't.

SENATOR GATSAS: Okay. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the amendment and in support of Senate Bill 125. I am a layman in the insurance business. I don't know anything about it. We have experts here and I certainly respect the expertise of Senator Flanders and Senator Gatsas and Senator Hassan **TAPE CHANGE** but I am person who represents a number of small employers. Those small employers went out to the insurance market and looked for coverage for their employees. They found that their rates were increased dramatically. As a body, we got the repercussions of that bill. Now I did vote against that bill. I did make some statements on the floor that I thought we created some problems with the passage of that bill. But the harm done by that piece of legislation was pervasive throughout our districts. We know a couple of things that are actually they are axioms in New Hampshire.

We have the healthiest people in the United States. We have seen that in survey after survey. We've got the healthiest people in the country and yet our insurance rates have dramatically increased. Well certain ingredients allowed that to happen. We had to change that. We had to change that in response to the people we represent. Donnie York, who owns Indian Head Sports in Manchester, saw his premiums double. Double. Small businessman. Young kid, lives in Bedford, graduate from Memorial High School, good businessman. Working hard to keep that business going in Manchester. Hiring people in Manchester. Sends me a message and says "Lou, what can you do about my insurance rates?" I depend upon the experts here. The experts say that this is a way to correct that situation. I support it. In reference to Senator Flanders' comments, have I read that amendment? No. I just got it this morning, too. I asked some questions about it. Senator Hassan gave me some answers. I know that she has been diligent doing her due diligence on this project. So the answers that she gave me I accepted as being axiomatic in terms of the changes would be of a positive nature. I think that's all we can do. We have to certainly have great respect for our colleagues. I think anything that happened in a hearing that wasn't done properly, I, as a Senator apologize for that because I don't think that's the way to run a business. I think we run those hearings in order to get public input. We have to get public input, take that public input, and then we make our decisions. I strongly believe in that. I have supported that ever since I have been here. I will support that until the day I die. This piece of legislation needs correction. Insurance companies should like New Hampshire. We are a good place to do business. I have heard that over and over and over again. We are a good place to do business. And if indeed this helps in making it a better place to do business, I support this. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. Let me attack this from a little different perspective. Commonsense. Commonsense tells me that when the last election was going on, I received more telephone calls and more comments about 110 than any other piece of legislation we passed last session. Why? Because of a lot of people were affected by our decision. Now the question was, are we going to repeal 110 or are we going to fix it? It was never "save 110". The realities are that 110 was doing a tremendous harm to the residents that we serve and the small businesses in our districts. We had, I think, we had an obligation to come here this year and fix it. I think that we've got a bill that fixes it. Is the bill perfect? Probably not. If any of you can give me a perfect bill, I would be glad to read it and to listen to you. There is no such thing as a perfect bill in this world or a perfect piece of legislation. The realities are that we are trying to fix the problem. There are some here who do not believe we had a problem. Well, I beg to differ with you. We had a major problem. It had nothing to do with partisanship; it had to do with business. So I would suggest and, like a lot of you, when you get into the details of this, your eyes glass over. But the realities are that the insurance companies will make the adjustments they have to make in order to accommodate the marketplace. They are in business like everybody else. But they should not be putting 70,80 and 90 percent increases on premiums in one year. That is unconscionable. We should not allow that to occur. This bill does not allow that to occur. So I ask that you support the amendment and then support the bill as amended. Thank you.

SENATOR LETOURNEAU: Thank you, Senator Gatsas. I just wanted to ask the question. You talked about bringing up caps on this particular piece of legislation. Would this be capping the existing premium rates

or would this be capping it at some other point? In other words, for the people who have seen 70 percent increases, does this cap it at 30 percent above that 70 percent or does it cap it someplace else?

SENATOR GATSAS: You know, Senator, that's a great question. Nobody can guarantee you that rates are going to come down with any piece of legislation that we bring forward. What this cap is, is for those people that saw a 70 percent decrease, would only see a 70 increase. We would only see an increase that would be adjusted by 20 percent, is what it does. Senator Clegg brought the amendment in and certainly I tried to accommodate him in the legislation, because you're right, we did put a cap on 110 last year and we should think of the people that got decreases over two years because they had that group. Again, they had a group of younger employees that were not ill, and they saw decreases. If that same group this year had an employee that got ill, they could see an increase of 140 percent because of the 70 percent decrease they saw and then the increase that could be made up. What this bill does is say the most increase they could see is 20 percent.

SENATOR LETOURNEAU: Thank you.

SENATOR HASSAN: Senator Gatsas, isn't it also the case that, because this bill eliminates medical underwriting, that some of the people who saw the most extreme increases should see some relief because medical underwriting will no longer be allowed upfront?

SENATOR GATSAS: That is absolutely correct, Senator Hassan. What it does is it brings competition to the market because you are going to see insurance companies that are going to go out and bid and have brokers actively looking for other companies to offer medical insurance. The medical underwriting being out of it, that group that had a high rate could see a lower rate. But again, it is about capping those people that got reductions, so that that giant swing doesn't occur again.

SENATOR HASSAN: Thank you.

SENATOR GOTTESMAN: Senator Hassan, despite your personal difficulties this week of which we all express our deepest sympathies...

SENATOR HASSAN: Thank you.

SENATOR GOTTESMAN: ...isn't it true that you spent hours and hours with the Insurance Department trying to work out the language as suggested by them in this amendment?

SENATOR HASSAN: Yes, Senator Gottesman, that is true. Senator Gatsas and I, and the Insurance Department have spent considerable time over the last two to three weeks, prompted in part by Senator Clegg's suggested amendment in Finance, to make sure that this bill is as technically accurate as it can be and to address some of the concerns raised by Finance.

SENATOR GOTTESMAN: Thank you.

SENATOR BRAGDON: Thank you, Mr. President. Thank you, Senator. This is really a question that I don't know the answer to, unlike many of the other questions that we have here. If we're capping increases for let's say I have a company and I have a health insurance policy with one of the few that are around now, and it is limited to 20 percent. Is that insurance company able to say we are not going to renew you and thus my only other option is the other company? I guess the question is, if they don't want to renew at 20 percent, do they have the option of terminating me if they feel that 20 percent is too low?

SENATOR GATSAS: Senator this is a guaranteed state. So no, they can't refuse you.

SENATOR BRAGDON: They cannot refuse to renew?

SENATOR GATSAS: Guaranteed issue state.

SENATOR BRAGDON: Okay. Whatever that means. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I, too can count, I took my left shoe off, I got to 13 on the amendment so I know where we are going. But I want to point out a couple of things. One, the Senator from Manchester talked about a business man whose insurance premiums doubled. Nothing in this amendment changes that. In fact, we give them the authority to charge them another 20 percent. When we look at what we have done, the amendment out of the Finance Committee was a two year deal. It sort of allowed the elections to take place and once more the small business community could say whether we were doing a good job or a bad job. So what we have now is a temporary one year cap of 20 percent. The second year is wide open. There is no roll-back provisions, so anyone who got that 170, 200 percent increase, they're still there. Yes, those who got a decrease won't get anymore than a 20 percent increase. But the people we were supposed to be fixing the insurance laws for, don't get the decrease. I know that somebody is going to stand up and say the insurance companies are great people and they are just going to lower the premiums because they are nice. These are the same people that we never suspected would do what they did after we passed Senate Bill 110, which was to go out there and take advantage of every loophole that they could find in the bill and hit people with 170 percent increase. And then post 42 percent increases in their profits, and give \$42 million to their CEO as a bonus. So, in my opinion, with all due respect, and I congratulate my colleagues on the work that they have done, we still haven't resolved the problem. We still have small businesses out there who won't be able to afford the insurance, and nothing in here fixes it. Thank you, Mr. President.

SENATOR GATSAS: I was wondering what Senator Clegg was doing with his shoes off. I couldn't understand it.

SENATOR CLEGG: I was counting.

SENATOR GATSAS: Senator Clegg, can you show me where in this piece of legislation that you say that allows a 20 percent increase?

SENATOR CLEGG: Well it says "a percentage increase in premium rates used by health carrier for new ratings shall not exceed 20 percent of the premium rates used by that carrier in the preceding." So they are allowed 20 percent. And that cap, by the way, is only for one year.

SENATOR GATSAS: Correct. Now what your assumption is, is that cap talks about premium rate. Now can you go up? Maybe I can help you out and maybe a clarification, if I had the opportunity I would give it to you. On page four, line 16. Do you see in there where it says that the band is 3-1/2 to 1?

SENATOR CLEGG: Yes.

SENATOR GATSAS: So, if tomorrow, your company or Senator D'Allesandro as he was talking about Indian Head Sports in Manchester, if they were to decide because medical underwriting is out, that they would ask for another quote from another company, that the band that they would be looking at is 3-1/2 to 1.

SENATOR CLEGG: If they went for another quote from another company, maybe it is.

SENATOR GATSAS: So isn't that competition?

SENATOR CLEGG: And for groups that are staying with the same carrier but changing their coverage, the premium rate increase will be limited to 20 percent, plus trend, according to Alex Feldvebel.

SENATOR GATSAS: That is correct.

SENATOR CLEGG: This bill allows for a 20 percent up plus trend if you stay with the same company.

SENATOR GATSAS: That is based on the companies that got discounts last year.

SENATOR CLEGG: I don't see where it says that in here, Senator Gatsas. I see wide open space.

SENATOR GATSAS: Thank you, Mr. President.

SENATOR FULLER CLARK: Senator Gatsas, is it not true by the reformulation under Senate Bill 125, that by doing away with medical underwriting and doing away with geographical underwriting as two of the key issues, that the premiums that will be written for next year have to be created out of a new formula and therefore, the opportunity for lower rates to come forward for everyone is possible?

SENATOR GATSAS: Based on the definition changes that we've made to the legislation, there is a definition of base rate. We have changed that definition to market rate. The market rate is approved by the Commissioner of Insurance. In that rate, that rate is made up of claims, utilization in trend, and administrative cost. The market rate must be approved. If he sees anomalies in that market rate that don't follow suit with what claims, administration fee and utilization trend is, then he can not allow the rate. So it is very clear that market rate...the funny thing is that when you look at the differences and probably where I first started with this whole thing to understand whether the rates were going to change or not change, is that when you look at Mr. Lithco's sheet that was run by the Insurance Department as they then called it "the base rate" and the "market rate" being the same today. Those two rates were about \$18 difference from 2003 when we were in this community rating basis that we all want to talk about, and in 2004, where we are with 110. It was about an \$18 difference. However, his premium from \$1,200 went to \$2,200 because of the case characteristics that were allowed in between it. So we have allowed, based on the market rate being looked at by the Commissioner, we have then said the rest of the health plan coverage plan rate can only have a band of 3-1/2 and 1. So have we eliminated some of those things? Yes. I guess the short answer to your question is yes.

SENATOR FULLER CLARK: Thank you.

SENATOR FLANDERS: Senator Gatsas, to follow up on Senator Fuller Clark's possibility of everybody having a reduced premium. Senator, is it possible that I may win the lottery?

SENATOR GATSAS: Senator Flanders, I didn't know you were a gambler.

SENATOR FLANDERS: My wife is.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Barnes.

Seconded by Senator Gatsas.

The following Senators voted Yes: Gallus, Burling, Green, Roberge, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Flanders, Odell, Eaton, Clegg, Letourneau, Morse.

Yeas: 15 - Nays: 9

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 131-FN, establishing a school choice certificate program. Finance Committee. Re-refer to committee, Vote 4-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 131 be re-referred to committee. This legislation establishes a school choice certificate program for those that qualify, based on a sliding scale. It was brought up during the hearing that the Department of Education made an error in calculating the fiscal note for this bill. After consideration, the committee felt that this legislation needed more time to carefully review the mechanics of the program and the fiscal impact to the state, if any. The Finance Committee asks for your support for the motion of re-referred. Thank you.

MOTION TO TABLE

Senator Estabrook moved to have SB 131-FN laid on the table.

A division vote was requested.

Yeas: 9 - Nays: 14

Motion failed.

The question is on the committee report of re-refer.

Committee report of re-refer is adopted.

SB 145-FN, establishing a medical/vision advisory board. Finance Committee. Ought to pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move Senate Bill 145-FN ought to pass. This legislation is designed to address those who should not be operating a vehicle, whether the individual is heavily medicated, elderly, or has a disability that may impair their ability to drive. This will allow the decisions on driving privileges to be based on medical science, not preconceived notions. This legislation has a fiscal impact of less than \$10,000 from fiscal '05 to fiscal '09. As such, the Finance Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I also support this legislation and I urge everyone to have an ought to pass...to vote ought to pass on this bill. Finally, we have a piece of legislation that is really fair for those individuals who have sight impairment. We are in a world where technology really helps us out as far as sight is concerned. For instance, glaucoma can now be totally cured or, in some cases, retracted so that people can see 3, 4 and 500 times better than they could see before. We also have an issue okay, where degeneration okay, is also

being treated. These people that wouldn't be qualified to drive at some point in time, due to the fact that they see and have these procedures done and possibly become drivers again. In this case, yes, this protects everyone, including them, to make sure that they are allowed to drive as long as they are competent. I agree with this and I believe that this bill is good and we should pass it as the committee voted 6-0 on this. I think we should all vote the same way, and I urge everyone to do so. Thank you very much, Mr. President.

Adopted.

Ordered to third reading.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices. Finance Committee. Ought to pass, Vote 6-1. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 146 ought to pass. The legislation creates a civil legal services fund by instituting a \$20 surcharge on all filing fees in the courts, except for small claims cases and those related to landlord-tenant cases. This fund will be used by New Hampshire Legal Assistance to provide civil legal services to low-income persons in the city of Nashua and the surrounding area and to provide additional staff to the existing Legal Assistance offices in Manchester, Claremont, Portsmouth and Littleton. These services help resolve many issues and help New Hampshire residents obtain federal benefits to which they are entitled. There is an additional program where moderate income and working class individuals will pay for legal services on a sliding fee scale. The services are limited to clients whose income is below 250 percent of poverty level from the federal guidelines. Please support the committee recommendation of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

Senator Barnes is in opposition to the passage of SB 146-FN-A-L.

SB 147-FN-L, relative to eligibility for local assistance. Finance Committee. Ought to pass, Vote 7-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 147 ought to pass. Currently, if a person shows up at a local welfare office, regardless of the length of residency, that town is obliged to help that person. The bill as amended establishes a 90-day residency requirement for local assistance. This has been a problem for the city of Berlin and they are having a difficult time absorbing the cost. All references to TANF were removed from the bill, and there is no fiscal impact. Please support the committee recommendation of ought to pass. Thank you.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

SB 193, relative to Occupational Safety and Health Administration Certification requirements for state contracts. Finance Committee. Inexpedient to legislate, Vote 5-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move Senate Bill 193 inexpedient to legislate. While no one disagrees that safety training in the workplace is a necessity, the industry is currently doing an excellent job of providing that training. In order to keep workers' compensation rates down, many companies already offer trade-specific training programs. In addition, this law would be cumbersome for contractors who would be held liable and would have to insure that every worker on-site has taken the OSHA course. Since trade-specific training is already being provided, there is no need for this legislation at this time. The Finance Committee asks your support of the motion of inexpedient to legislate.

SENATOR LARSEN: Thank you, Mr. President. I rise to oppose the motion of inexpedient to legislate. Senate Bill 193, as you heard, requires OSHA training. We had some of this debate already, but I think we need to reiterate. Since 2002, there have been eighteen workplace fatalities here in New Hampshire. There accidents are real costs. Real costs and loss of humanity. Real costs to insurance programs, to government services, to businesses. Those most important costs, as I said, are more than just financial, but are in fact those borne by families and friends. Twenty-two percent of all workplace fatalities happen nationwide on construction sites. The construction workers represent only 6 percent of the American workforce. In addition, between four and six construction workers die everyday in America. This bill affects not only state public works projects... I'm sorry, it only affects state public works projects and not local and private projects. The costs per trade for the implementation for Senate Bill 193 are nothing compared to the costs incurred to families. If we can defeat the inexpedient to legislate motion, I will bring in a floor amendment, which clarifies, in fact, that the costs will be in fact, supported or will not be supported by contractors or subcontractors, and in fact, nothing would require the employer to pay for the cost of such certification, leaving open the option of how it is paid for. Many, many industries, as we know, pay for their own certification if they want to work on a job. If you want to be a plumber, you pay for your license. If you want to be a truck driver, you pay for your truck drivers' training. We already know that police and firefighters pay to go or sometimes they are supported by their towns and communities, to attend fire safety training or police standards and training. This leaves open the option, but the floor amendment clarifies "that nothing in this section requires the employer to pay for the cost of certification". It will clarify that any contractor or subcontractor who submits a bid must certify that those they are hiring are certified, but it clarifies that they are not in fact required...the employer is not required to pay for the cost of certification. What I ask of you is to consider the loss of lives that we have had in this state. If there were any other industry that caused eighteen fatalities since the year 2000, would you not consider making sure that the basic safety training be offered to all, and that those who work on public contracts in this state understand basic OSHA training, training that runs the gambit of basic level training to perform their job in a way that does not endanger themselves or those that they work with? Now some have argued that you need to just have training in scaffolding if you only make scaffolding. But, what about the person who is working underneath the scaffold? What about the person who is working beside that person on the job? Broad safety training is a requirement of police; it is a requirement of fire. We require safety training in any number of jobs, certainly truck drivers. Whatever industry you are looking at, they are

trained in safety procedures. It makes sense to require this. It makes sense for us to work on reducing fatalities in this state and I urge you to defeat the inexpedient to legislate and I ask for a roll call, Mr. President.

SENATOR BARNES: A question of you, I think, Mr. President. I want to talk about Senator Larsen's amendment. I have a comment to make on something that is in there.

SENATOR EATON (In the Chair): The amendment has not been offered.

SENATOR BARNES: It is improper for me to do that unless we vote to have that happen.

SENATOR EATON (In the Chair): Correct.

SENATOR BARNES: Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I rise in favor of the motion to ITL. We have heard about an amendment that we haven't seen, that supposedly takes the cost of this program and places it...and I am surprised that the previous speaker was wanting to do this. This would take the costs, it seems to me, of this program, which we are told is not much, but would take it and place it on the back of the worker. Now I always thought that her party was the voice for the workers. What she is saying is that the employer won't have to pay for this training, which is ten hours, and they won't have to pay their employee to go wherever it is taken...

SENATOR EATON (In the Chair): We were talking about the amendment. Redefine that.

SENATOR BOYCE: Okay. That's fine. I will stop talking about the amendment. I will go back to the bill. The bill itself, one of the reasons why it is unnecessary in the broad spectrum is that insurance companies that write insurance for contractors, require those companies to have a safety plan and train their employees in the proper safety for the job they are doing. This training program offered by OSHA, I am told, is actually geared to supervisors. Now it might be appropriate for a contractor, after talking to his insurance company, to send his supervisors to this type of training. This is a very broad, general program of safety on the worksite. But, if you're a contractor and you're hiring high school students for a summer job or college students for a summer job to stand out there on the side of the road and wave the flag, there is no need for them to take training that applies to high rise construction jobs. They are never going to see a scaffold in that job. If they do, they're not responsible for that scaffold, somebody else does the scaffolding. Their supervisor will look out for their safety and keep them away. The larger issue in safety in the workplace is drugs and alcohol. If we really want to try and look at those sixteen or eighteen lives that were told have been lost since '92? 2002. If we want to look at that, what we need to do is go back and look at how many of those were actually caused, not by simple negligence or not understanding safety procedures, but they were caused by somebody who was under the influence of alcohol and drugs. I am told that the major contributor to these accidents in almost every case you'll find is drugs or alcohol being used by someone at the workplace. If that's...if we want to make a difference, we should pass something that deals with that. This blanket bill saying that the employer, the contractor, will be responsible for making sure every person...and that is what this bill says as it is written, every person that comes on that site will have this training. That includes the hot dog vendor that drives his van into the construction site and sells hot

dogs to the workers. He would be covered under this. The contractor would be responsible for making sure that that hot dog vendor had taking ten hours of training and I'm not sure who is going to pay for that training, but I don't think the hot dog vendor wants to pay for training to go sell hot dogs. But maybe somehow the contractor will have to hire his own hot dog vendor and send him to the training. Now some of the debate on this bill in the previous time was based on that the employer wouldn't really have to pay for this, that they could take this training on line, we have been told. If you take training on line, the employer still has to pay to allow you to do that. So if you don't have a computer, the employer is going to have to pay for the computer and the employer is going to have to pay for the time that the person sits in front of the computer. It may only take ten hours if you are actually doing it...if you go to wherever these classes are taken, but some people may not be as proficient on the computer. It make take them 20 hours. I think the employer is responsible for 20 hours of work. There have been labor rulings, court cases, that have said that, if an employer requires training for their employees, they have to pay for the cost of that training, whether it's a fee to take the class. They have to pay for the time while the employee takes it. We found that out recently with the classes that are required for servers in restaurants and bars. They have to come down to the Liquor Enforcement Office and take the training, and they have to be paid by their employer, for the mileage coming down here and for their hourly rate while they are sitting there in that class taking the class. There is no difference here. If this ever came to a court, I am sure that the court would rule the same way. So this is a cost to the contractor which will be passed on to the state, to the taxpayers, and what will we get out of it? I don't believe we will get anything because the contractors' insurance company is already requiring them to have appropriate safety precautions for their workers; otherwise they won't write the liability policy for them. The effect of this bill is only to increase the costs and I believe will have nothing to do with increased safety. Thank you.

SENATOR MORSE: Senator Boyce, is it not true that the only incident that came up in committee was about drug and alcohol in a death, and that the industry actually testified to the great strides that have been made in testing on that part?

SENATOR BOYCE: That is what we heard in committee. Yes.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the inexpedient motion. I hate to differ with my colleague, Senator Boyce, because we serve on a number of committees together and I enjoy that participation. But, I sold hot dogs, Senator Boyce, and I sold ice cream. I never had to go through OSHA training. I did it for years. I would do it again today. This bill does not mandate that the hot dog salesman has OSHA training. I would hope they have health training. That's what that one's all about. We heard some excellent testimony. I think that the one thing that I do support is the fact that there was a contractor who came in and who said, categorically, the problem we have on our site is drugs, and we test for drugs. I complement them for that. I think it is a wonderful thing that they do that. Alcohol is a problem. We all know that. It is a serious problem. We also know that we can do something about that. Since 2002, eighteen people have died in the workplace. I remember testimony in this group were, if one person died we were all at fault. Well, eighteen people have died because of construction accidents. What does that do to the cost of insurance for the com-

pany? We know that we have talked about that. We have talked about escalating rates as far as that is concerned. But what is wrong with being safe on the job? What's wrong with safety? We practice it all of our lives. We go through a process in the D'Allesandro house where we tell our kids how to get out of the house in case of a fire. We plan the route. We put up the smoke detectors. Safety. We all talk about safety. Safety and security. How much do we spend on homeland security? It's billions now. Now we are talking about safety, security and telling people how to be safe on the job. What's wrong with that? Where are we coming from? It makes a great deal of sense for us to do this. We take pride in our contractors in the state of New Hampshire. I have always taken pride in them. When I reviewed contracts as a member of the executive council, it was with great pride that I looked at the quality of work done by New Hampshire contractors. I can't see why a New Hampshire contractor would be opposed to this. It just makes good sense. Your dollars make good sense, spent correctly. And we should teach our dollars more cents. C-e-n-t-s and s-e-n-s-e. Thank you, Mr. President.

SENATOR FLANDERS: Thank you, Mr. President. If I may, a recent experience I had with a business in Antrim, my home town, who was starting up a business and had to send some people down to Concord to take the test as far as selling liquor. They were not employees, they were people who were being interviewed. And the decision was that four of them would come down to take the test. They came down, they took the test, and he hired two of them, and did not hire the other two. When the Labor Department went in to make an inspection, they found that they had not paid mileage, paid salary and for a meal for them to be down here and they were fined. They were fined by the Labor Department. Also, the two that they didn't hire, had to pay them an hourly rate and had to pay. So I believe the way that the bills read today, is exactly the way it has to end up because, if the Labor Department goes in, and I know that this happened, because they had to go into a hearing. They went in to try to defend it, and they were fined for not paying for those people to come down, to take what they asked them to do. I think this has to be on the record. Thank you.

SENATOR GATSAS: Senator D'Allesandro, I assume, I'm looking at the bill number and it is Senate Bill 193. There was no FN on it, so I assume it was sent to Finance to find out if there was a fiscal impact. All I've heard this morning is talking about policy. Can you tell me if there was a fiscal impact or what the position of Finance was based on the fiscal position of this bill rather than the policy position?

SENATOR D'ALLESANDRO: Since I voted in Finance, I voted against the inexpedient, I would defer to...I would yield to the chairman of the Finance Committee.

SENATOR MORSE: Senator Gatsas, there was no fiscal note produced on this. I think, as I speak, I will probably be able to explain why.

SENATOR GATSAS: Thank you.

SENATOR MORSE: Thank you, Mr. President. As I speak today, I guess I speak as a small businessman, and then as the Finance chair. I would like to relate this to everybody in the state because, as a small businessman, who is a Senator, I don't bid on state contracts because I don't feel like I should be. But then when I thought about it, I said, well, I am still involved in this, because the fact is, if I direct ship a truck to another nurseryman or landscaper to a job site, I am involved. Those

truck drivers are involved, as I brought it up earlier today. A mulch driver in the north country going on a site, based on the way that this is worded, is going to have to have ten hours of OSHA training. We can debate whether that is good or not. We'll debate that all day long. Many people came in and testified about their own programs and how they are working. Matter of fact, Audley's letter, when they wrote to us, and I am proud of the contractors in this state, and I think every contractor is equally proud of their company, because this is what they write. "It does not make sense to teach two hours of electrical safety or fall protection to a traffic flagger, equipment operator or truck driver. We will also be faced with significant burden of ensuring that all subcontractors employees are trained." And they go on with some allocations that you can bring up that we don't have to make sure that the pizza man or anyone else on the delivery site has to be involved. But I think it reaches into there. So yes, you drew me in. And you probably drew in a lot of people I buy from in the state of New Hampshire, into this. Then what came up was a 28-A issue. Whether we put an amendment in or not...I say to that, if it is good for the state of New Hampshire, and good for the businessmen, then it should go in for everybody. Because there is truly a cost. Where they can't calculate that cost is, how do you calculate how much a bid document is going to go up? Last year when we brought a document onto this floor, it was because in my town, selectmen were trying to put language into a bid document for a police station that was going to unionize the contract and this was one piece of it. And you know what happened when they called me from the town to talk about it? They told me on a \$7.5 million contract, it was going to be a \$2 million increase. Should the taxpayers know about that or should the selectmen just write that bid document? Because that's not right. When you start to force these issues upon businessmen, they have to **TAPE CHANGE** to that. Essentially what I really have a problem with on this is, I am a good businessman. I think I am doing a good job and this is just another way to get into the door to tell me how I am going to run the company, and I think that is totally unfair.

SENATOR CLEGG: Thank you, Mr. President. I think that Senator Morse touched on a few of the issues as far as cost. DOT sat there and told us that the way they read the bill, they would have to be the OSHA police. They wouldn't be able to just go on the job and see who had the certificates until after they trained their people. Now we heard from the union that is behind this bill, that people would be willing to train for free, 'cause that is how it works in Massachusetts. So we asked DOT to talk with the union president and find out if everybody in their shop would be willing to go and do this training on their own. The answer from the president of the union was, "We have a contract. We are entitled to the training. You will pay for the training and you will pay us to be trained." So there's a cost to the state of New Hampshire. Commissioner Murray talked to Colonel Booth yesterday and said, "By the way, the way this bill reads, if you're going to have a set of blues on a state construction project, your trooper is going to have to have the OSHA training or you are not going to be allowed on the site." Let's talk about municipal. A lot of the state projects, like the one in the town I live in, the town of Hudson contributed materials and labor for its portion of the roadwork. As soon as it does that, it's now part of the state contract. It now has to have the OSHA training. So it is a cost to me on the municipal side. And we have a hard enough time coming up with the dollars to do our work now. We talk about police and fire, the previous speaker did. I am going to tell

you that you can't just go to the police training academy and say "I want to be a cop, train me." You first have to be hired, and second, sent by an authorized police department. You don't get to just walk in. So I want to make it perfectly clear that police and fire don't pay for their training. They are hired and trained. In fact, we have passed legislation in here to help the volunteer departments pay their people to be trained. I don't think we want to change that. I don't think we want to start saying to police and fire, like we want to in this bill to construction workers, "go pay for your own training. When you're trained, you can come work for us. It's your choice." How many people can pay \$17,000 to become a police officer, 'cause that is what it costs a community, \$17,000 to train a policeman? So now we are just going to say let's add another amendment. You want to be a cop, go get your own training and pay for it. I don't think we want to do that. What about the person under the scaffold? Well I heard mention of an amendment that is going to exempt some people. As Senator Morse said, if we are going to exempt half the people and half the others are going to be forced to have the OSHA training, then isn't half the population supposedly going to be unsafe? New Hampshire contractors don't need government to tell us how to do business. We heard from the contractors that day, who said, "I have my own training programs. I have my own safety programs. I have them because my insurance company helped me design them so that my workers' comp is lower. I have fewer injuries on the job." And we heard that the reason why we have injuries is because of a drug and alcohol problem on the worksite. It is not due to lack of training; it's due to people abusing substances while you're paying them, and putting everybody in jeopardy. I would like to say that an OSHA program isn't going to change that person. It takes more than an OSHA program. We talk about being able to take it online. Well, I have said it in committee and I will say it again. If you want to have this training online, how are you going to guarantee me who is taking that training? Are you going to guarantee me that somebody in the company's not going to sit down and take the test for ten of its people while they are out there doing something? You can't guarantee me. Because we all know that the possibility exists. So doing it online doesn't do anything. Last, but not least, my feeling is, there's a whole lot of people out of work from the Big Dig over in Massachusetts. And I asked the union when they testified, "Are your people certified with this exact training?" and they said, "Yes". So I see this as nothing more than an attempt by Massachusetts to come across the line, put in some more requirements for our contractors, so our people are sitting at home. That is not right. We should be protecting our people. Our companies are protecting our workers now. They have their own programs. To change it for a group from across the line who didn't do such a great job on the Big Dig as it turns out anyway, they've got all kinds of safety programs. But did you see how the ceiling in the great tunnel was falling on an ambulance? I don't know what safety program they went to. As far as I am concerned, if we don't ITL this, we put a lot of our own people out of work, for the benefit of an organization across the state line that we owe nothing to. Thank you.

SENATOR GATSAS: Thank you, Senator. Senator, would you have a problem if every construction company that has a safety program in place were to issue each employee a certificate that said that they participated in the training course?

SENATOR CLEGG: Senator Gatsas, I don't think it's our right to tell any company to do anything. If they aren't running a safe company, their

insurance company is going to bear down on them. They either not going to be able to get insurance and go out of business or they are going to do the right thing. I don't think we need to put a bill in that says give your employee a certificate that says you trained them.

SENATOR GATSAS: Would you believe that this body and the body across that wall passed legislation that said any employer that has over five employees, must have a written safety program in place?

SENATOR CLEGG: Senator, I agree that some of you voted for that and some of us didn't.

SENATOR GATSAS: So those of us that voted for that believe that the issue of employees being safe is different from employees not being safe?

SENATOR CLEGG: I don't understand your question. But you put a burden on a company to put together some kind of a safety program, many of the companies can't figure out how to make it work. The Department of Labor for years has said it doesn't work in a lot of offices. So most of the companies out there with five or fewer...small companies, aren't even complying. So we put on a burden to the business that some people are getting fined for not doing, but I mean, we can do that, can't we?

SENATOR GATSAS: So Senator, why wouldn't you be in favor of every employee that works at a work site, have the employer, if they put that safety program, and it is a written safety program in place, to have that employee issued a certificate?

SENATOR CLEGG: Why do I want to burden the employer with more paper? You're going to come down and you're going to see whether or not they are complying with the law. If they've complied, they've complied. We don't need them to have to start issuing anything.

SENATOR GATSAS: Thank you.

SENATOR MORSE: Senator Clegg, would you believe respectfully, I disagree with you? What Senator Gatsas said is true. As a small businessman, I put in place, with other landscapers, this policy, but you cannot do that, Senator Clegg, and I asked, "Who do you think should have paid for that", because I funded all of that to happen in my company, and it was a tough thing to do. It wasn't as easy as people up here think, to develop those things.

SENATOR CLEGG: I agree, Senator, that you've got a safety program. My contention is that I don't think we should force you to issue a certificate to every employee who took that course under you.

SENATOR FOSTER: Senator Clegg, I was looking at the bill this morning. It seems to say that it is applicable to contracts entered into on or after July 1, 2007, which is about two years from now, two years and three months from now. So wouldn't that give ample time for New Hampshire employees to get the appropriate training so they won't run any risk of being dislodged by the now unemployed or assured to be unemployed folks down at the Big Dig who you're saying have an advantage because they already have the training?

SENATOR CLEGG: Well, first off, I don't believe that they intend on leaving that in there. I believe that when it goes over to the House, if it goes over to the House, if we are unsuccessful in saving New Hampshire small businesses, that they will attempt to move that to an earlier date. I don't believe that we should, under any circumstances, force a company to do anything from up here, especially when they are already taken care of the situation.

SENATOR FOSTER: Thank you.

SENATOR LETOURNEAU: Senator Clegg, thank you very much for taking my question. Aren't many of these jobs seasonal jobs? I have a letter here from one of the employers that says it costs \$260 roughly per person to do this training, and they can do the same cost in-house for about \$100. If this is a seasonal job, don't many of those employees leave during the summer after they get this training?

SENATOR CLEGG: Senator, I believe you're right. Let me give you a brief of what was in the GNC in the last three months that would be affected by this bill. New England Tree Transplanting from Gilmanton Ironworks would be affected. They transplant trees. Water Line Services out of Seabrook. Pella Construction out of New Ipswich. Harvey Construction. Waste Management out of Rochester. Estes and Gallup out of Lyme. Ray's Electric in Berlin. Those are some of the people that get...Capital City Paving here in Concord Those are some of the people. And yes, paving is seasonal. Every year you are training half a new crew. So you're right, it would be a problem. I think the problem would be is a lot of these companies would just say, "I'm not interested" and the price is going to go up and fewer of our citizens are going to have work.

SENATOR LETOURNEAU: Thank you.

SENATOR FLANDERS: I think we beat this one pretty badly, but I would like to just say something from the insurance industry. I was reading the notes from the hearing and Senator Larsen asked Peter McArdle if this legislation would bring down insurance costs? His answer was that the insurance companies are very safety conscious and in fact, if they do not meet the standards of their company, they don't write the policy. I want to tell you from personal experience, that we have...all companies have what they call "loss control". Within this loss control, they used to call them "safety engineers." Before they write a policy, they go out and they check. These people are OSHA trained. That is what their job is. To make sure that the companies are aware of OSHA and that they are complying with OSHA. So I think what you want to do with this piece of legislation is already being done and it is called "loss control". It is very active. All companies have it. They go out and they make sure that the people they are insuring are doing what OSHA says they should do. Thank you.

SENATOR BARNES: Thank you, Mr. President. Actually, it is a statement.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, I will yield to Senator Barnes as the elder statesman and I will follow him.

SENATOR BARNES: I thought you were bringing some in.

SENATOR D'ALLESANDRO: They're not nutritious under Senator Foster's bill.

SENATOR BARNES: Thank you, Mr. President. You know, hearing about this OSHA training and how important it is, and it certainly is. But I've got to tell all of you, that it is nothing new. As some of you know, I used to sell hamburgers for a living. I used to be a corporate employee of McDonald's Corporation before I became a licensee. Twenty some years ago, probably 25 some years ago, McDonald's Corporation, when OSHA came into effect, very serious about OSHA training. Every restaurant. I was responsible for about 350 of them out in the New York State area that had to have training programs and had to have things put up. So if anybody thinks this OSHA training is something brand new, I just don't want

you to think it is. It has been going on for years in big corporations and little corporations do it because we had an awful problem 25 years ago in the McDonald's Corporation, and other places to, with something called workmen's compensation. The OSHA training helped us in the training that went on. I can remember painting with a paint brush. A yellow paint brush, painting around pipes and around meters so the folks wouldn't walk into them. That was all part of what went on. It was rather successful because the workmen's comp rates came down. But workmen's compensation. OSHA training is not new; it has been around for a long time. Responsible companies, responsible contractors or whoever, are doing it to save their employees from being hurt and also from keeping their insurance rates down. It just makes good sense to do it. I think an awful lot of people have probably been doing it over the years. The restaurant business had quite a history, when you were talking about the construction business folks having a problem. We had a problem in the food business, people getting burned. A lot of hot equipment. That was all part of the training there. We didn't have the drug and alcohol problem that apparently I have heard about sitting here today, but we had a lot of young folks working for us who we had to be very careful of. So with this OSHA training that I am hearing about, it all sounds like it is something brand new and out of the woodwork. Also something else, McDonald's, and I know other places, paid for the training. When I had my restaurants, and I would send people from here in New Hampshire, for training classes down in Westward, where the training classes were in Massachusetts. Guess what? The folks punched in when they left in their automobile. I gave them my credit card so they could fill up with gas, have their meals down there and I paid for that. When they came back, they punched out. So they were paid for the whole time traveling an hour and a half to Westward, training and coming back. I don't know if that is the law, but I sort of think it is. This happened all over the country. It is not just something that happened here in New Hampshire. If you send people out for training, by God you got to pay them. You got to pay them for their transportation to and from to. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Second time. Thank you. I just want to say two things. My wife was a member of that union, that IBEW union. My honorable colleague, Senator Clegg. I know that she worked hard. She got her OSHA training and she was a good employee for New Hampshire and a good employee for the company. I think, by training people, you make them better employees. You make them more efficient and you become a better corporation because of the quality of your employees. You're investing in quality, hoping that that quality will have a good cost benefit ratio. I worked on a job site when I was in college and we had a big board at the job site. A light went on every day for a day without an accident. As a result of that, we had a great roar at the end of each month that we went through that month without an accident. I thought that was a great thing because we were careful, we were trained, and we were particular about the job we were doing. I think New Hampshire employees do that. This training will benefit those employees and will make our corporations even stronger. I know many of these corporate people that have written and called. They are good friends of mine and I appreciate their sentiments, but I want to make them stronger companies. I want to make them better companies. I think this will help to do that. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I just want to address some of the issues that have come up in our discussions. When we debated this last, before it went to Finance, we had a discussion on the injuries. I called the U.S. Department of Labor here in town, the OSHA offices, and got a list of the accidents that occurred. In the course of just one year, since April 30, 2004, we have seen electrical power line contractor employee receives shock from power lines. Fall from roof. Trench collapsed with worker in trench. Fatality by struck vehicle. Fatality by struck vehicle. Electrocution. Employee run over by trailer truck resulting in death. Injury on carbon monoxide over-exposure. Lull lift fell from trailer. Another death, fall from fork lift basket to the ground. Injuries from dust collector fires. Injury from alcohol flashbacks. That is one year in our state. Now we heard that we might have...that seasonal employees might be affected. But if in fact, work is seasonal, which oftentimes construction is, shouldn't those people, over time, if they are regular seasonal employees, over time, we will have our seasonal employees who have gone through the training. Our workforce will, over time, be trained in safety so when they put themselves into jobs, when they are part of a successful bid, they have their card to show they know how to do the work in a way that is safe, in a way that keeps their coworkers safe. If you look at the OSHA training list, it requires topics covered, including general safety and health provisions, electrical safety, fall protection, personal protective and lifesaving equipment, materials handling, storage and use. These are normal training and safety projects. It makes sense to have a workforce over time that is prepared to operate safely on the job. As I say, the costs will be clarified in the amendment to follow and, as was pointed out, the bill does not take effect...the act does not apply to any contracts until those entered on or after July 1, 2007. In all the work that we have done on this bill, I have heard no one say that we are going to push that date up. I can assure you that, if they did, they would hear it from our team as well. It takes time to get people trained, but it makes sense to do it. It makes sense for the safety of our...for the people who work in this state. It makes sense for the families who expect those workers to come home safely from a job each day.

SENATOR CLEGG: Senator Larsen, in the list that you just gave me, two of those were flag people hit by motorists. But, as I understand the bill, motorists who drive through a construction site wouldn't have to have OSHA training before they did so. Would they?

SENATOR LARSEN: You know, we require motorists to get safety training by having them take courses in instruction and in driving. Certainly that is included in learning how to drive safely. There will always be people who do not drive safely, and it is an interesting subject that you bring up and an unlikely one.

SENATOR CLEGG: Okay, so those two people had safety training. Can you tell me how many other people involved in the rest of those accidents, did or didn't have safety training? Does it say that in the OSHA report?

SENATOR LARSEN: I am not an expert in...when I read these reports, there was not...it was not clear who had had training, who had not had training. But clearly, for those who were involved in the accidents, you would hope that each one of them had training. It doesn't appear that they had training from the report. The report doesn't tell me that.

SENATOR CLEGG: So I can't assume that those eighteen accidents were caused by lack of safety training. I just know that there were eighteen serious accidents in the state of New Hampshire.

SENATOR LARSEN: There were one, two, three, four, five in the last year. Deaths.

SENATOR CLEGG: But we don't know how many of them had safety training, although some of them were electricians, so I know they do have safety courses.

SENATOR LARSEN: I don't have an answer for you, but I can assume that the more people that are trained in safety courses, the better off we will be, and New Hampshire's families will be.

SENATOR CLEGG: Thank you.

SENATOR MORSE: Thank you, Mr. President. I would just like to clarify a few things. The date in 2007 conveniently coincides with when the major construction on I-93 will start. They're doing Park and Rides right now, but the major bridge work and construction of the road work will be in 2007, and I am sure people would like to be able to bid on that job and raise the standard. I said Salem was up 30 percent on a bid document. This will raise it somewhere. Don't know that it will raise the cost of the document up to 30 percent, but it is something to consider. I was in Nashua with Senator Gottesman a couple of weeks ago, speaking to a business group. In front of me, appeared an OSHA document for landscapers. Landscapers are only 20 percent of my business. That is not what I do wholly. I am a nurseryman. But I do deal with a lot of landscapers. As I read the document, which my wife would deal more with than I will because she keeps the safety manuals. She works 20 hours a week by the way, to keep up with everything that DOT wants and everything that Safety people want. Just to keep up with them. But as I read it, the majority of it didn't even go to anything I do. It didn't make much sense to me. And all that I ask, 'cause I'm not afraid to pay. I am like McDonald's, I don't mind paying for what I believe is right, but as those 60,000 businesses that we have in the state of New Hampshire, I think we ought to have the decision on what we believe is right for our companies. That's what this comes down to. What do we believe is right so that we pay lower insurance rates, so that we can deliver the best products? You know, everybody thinks about it different, and we ought to be able to do that. That's what built this state. That is New Hampshire. I don't think telling people how they're going to do it, is the way that we should do it. I think we should support the ITL motion. Thank you.

SENATOR BURLING: Thank you, Mr. President. I was chastised earlier in the day by my good friend from District 14 about the length of my speeches, so I will speak faster and shorter. There are, it seems to me, just a few questions that ought to determine the outcome of this vote. First question. Do we believe in having the safest possible worksites for New Hampshire projects? I do. Frankly, because I know you to be good, decent people, I bet you do, too. So we agree. Question two. Do we believe that training can help improve the safety on a jobsite? I do. Now you don't know this about me, but for 15 years I was a volunteer firefighter and, for some of those years I was the training officer. I know that training makes dangerous places safer. I know it. Therefore, since I have answered yes to one, and yes to two, I can make the connection that having good training will help make our jobsites safer. I believe that OSHA training is good training. The final point is, do we think that contractors should bear the cost of this process of making our jobsites safer? Like you, I do not believe that. My preference is for a system that doesn't make the contractors pay that cost. When I was a firefighter, I

remember grumbling about the notion that I had to come down here to Concord to take my Cert #1 course. I didn't want to do it, until of course I got into it and discovered how interesting it was. But I did it, and I did it because I knew that, as a precondition of doing my job as a firefighter, I needed to be trained on how to stay safe and do the job. Senator Foster earlier today, talked about the concept of precondition; that the issue of training should be a precondition to working on a state job. I agree with him. And for all those reasons, I am going to vote no on inexpedient and listen to Senator Larsen when she tries to introduce her amendment. I think we owe it that much seriousness.

SENATOR CLEGG: I believe that the previous speaker left out one question, and that is, do we believe government should once again step inside and take over how private businesses run or do we believe that private business people here in New Hampshire operate in a safe manner and think more of their employees than whoever wrote this legislation does? Thank you.

SENATOR HASSAN: Thank you, Mr. President. I believe that most of New Hampshire small businesses are honorably run and want their employees to be safe. I have great respect for my colleagues in this chamber who run small businesses. As a lawyer who has represented small businesses, I understand well the frustration of regulations that seem burdensome and sometimes are burdensome. But our job as public policy makers is to balance that frustration which is indeed very real, with the possibility that OSHA training will save workers' lives, because there are some businesses who will not train their workers appropriately. One of those accidents that Senator Larsen referred to happened because an employer sent an employee up on a forklift, in a plywood box on the fork lift. Guess what? The plywood box fell off. I hope that this training...and I believe that this training might have empowered somebody on that site to say, "You can't do that. That's is dangerous We need to stop and think." So when I balance the very real frustration that my colleagues feel and the very concern that government is coming in and telling them what to do, I balance that with the lives of workers and with the fact that people count. That is why I will vote against the inexpedient to legislate and I will listen to Senator Larsen's amendment. Thank you.

The question is on committee report of inexpedient to legislate.

A roll call was requested by Senator Larsen.

Seconded by Senator Clegg.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Gallus, Burling, Green, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 12 - Nays: 11

Senator Bragdon rule #42.

Committee report of inexpedient to legislate is adopted.

SB 26, requiring identification to obtain a ballot. Internal Affairs Committee. Re-refer to committee, Vote 3-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that Senate Bill 26 be re-referred to committee and, in interest of lunch I will keep my remarks short. Please vote with the committee. Thank you.

Committee report of re-refer is adopted.

Recess.

Out of recess.

MOTION TO REMOVE FROM THE TABLE

Senator Estabrook moved to take SB 171 off the table.

Adopted.

SB 171, establishing a committee to study HIV/AIDS service delivery. Health and Human Services Committee. Ought to pass with amendment. Senator Estabrook for the committee.

SENATOR EATON (In the Chair): Now we went through the procedure last week and I just want to go over that with you. The first piece of paper that is going to be passed out is the actual bill, because you don't have a copy in your folder. The pending motion is the committee amendment. The committee amendment you will always find in your brown journal. So, we will be voting on the committee amendment first and then, once that is voted on, any other amendment can be brought forward. Senator, if you would speak to the motion now. The amendment will not be passed out until the committee report amendment has been approved or denied.

SENATOR ESTABROOK: What we are speaking to now is the committee amendment then?

SENATOR EATON (In the Chair): This will be on the committee amendment. Did you wish to make a recommendation?

SENATOR ESTABROOK: Yes, I would. Thank you, Mr. President. I would like to ask my colleagues to vote down the committee amendment. When I discussed this last week, I explained that there had been some issues regarding some of the wording and the purpose statement. We would like to remove certain portions and make slight changes to the rewording of others in the floor amendment we will be bringing forward. So the committee would ask that you vote down the committee amendment first. Thank you.

The question is on the adoption of the committee amendment (0889).

Amendment failed.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

April 5, 2005

2005-1017s

01/04

Floor Amendment to SB 171

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study HIV/AIDS service delivery systems.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, 2 of whom shall be from the health and human services committee, appointed by the president of the senate.

(b) Three members of the house of representatives, 2 of whom shall be from the health, human services and elderly affairs committee, appointed by the speaker of the house of representatives.

II. The committee shall solicit information from the commissioner of the department of health and human services, state aids services organizations, and any other person or entity the committee deems relevant to its study.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall:

I. Assess the care needs of persons living with HIV/AIDS in New Hampshire.

II. Investigate service delivery system models and associated fiscal issues of designation and distribution of funding in the other 5 New England states.

III. Research an effective service delivery system model for people living with HIV/AIDS in New Hampshire including levels of funding necessary to implement a model system.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

SENATOR ESTABROOK: Thank you, Mr. President. I would like to move ought to pass on amendment 1017s. What the amendment does is it retains the status of this study as a committee of the legislature. It removes the purpose statement and it makes very small changes to the wording of the duties of the committee, none of which will really affect their ability to do the job at hand. I think it is very important that this study move forward. The findings of this study will help us to continue to make progress in both prevention and treatment of HIV/AIDS. It has the strong support of the Department and Doctor Kessler, as I indicated last week, and I hope it will also have yours.

SENATOR MARTEL: Thank you very much, Mr. President. I want to thank Senator Estabrook for bringing this fine piece of legislation, especially the amendment that she worked on so hard, and I thank you, Mr. President, for working on it as well. This bill really gives us an opportunity to really get to the core of the issues of HIV/AIDS here in New Hampshire, and treating all those people who are in real need of that treatment, and the medications that they need to survive. When it came to my committee, we heard some very, very hard, difficult stories that people gave us. I will tell you, it was heartwarming to see that we could bring some legislation out onto the senate floor for us to vote as a whole, and to look at. So, Mr. President, I thank you all for the work that was done in this case and for Senator Estabrook for being the prime sponsor on this bill and all of the cosponsors. I ask you to please vote ought to pass on this bill as amended. Thank you, Mr. President.

SENATOR BOYCE: Just briefly. I would just like to recommend that, if this should pass, which it probably will I suppose, that this committee also consider as part of their charge, not just looking at the effective service delivery for people with AIDS and HIV, but to look at prevention. Particularly, I might ask them to look at the effect of the bill that we just passed out of this body last week, which is the morning after birth control pill being available basically, over the counter. I believe that prevention on HIV is much more important for us to think about than the treatment, because it's a highly preventable disease. We know how it is transmitted. We know that there are effective methods to prevent the transmission. We know that there are behavioral situations that lead to the transmission in most cases. So I think that this committee, while it is looking into the levels of funding for the care of people with AIDS, we should also be having them look at the methods of preventing the spread of AIDS which I think are being ignored by this study committee. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 43, relative to the administration of estates of persons presumed dead. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

Senate Judiciary

March 31, 2005

2005-0984s

01/09

Amendment to SB 43

Amend the bill by replacing sections 3 and 4 with the following:

3 Administration of Estates. RSA 553:18 is repealed and reenacted to read as follows:

553:18 Administration of Estate of Person Presumed Dead.

I. The judge, following a hearing, may appoint an administrator of the estate of a person, with such limitations and powers as the judge deems appropriate:

(a) Presumed dead pursuant to RSA 553:19, I; or

(b) A person who has left his or her home and has not been heard of or from directly or indirectly for 6 months and whom the judge believes to be dead.

II. Prior to appointment of an administrator of the estate of a person not heard of, notice shall be published in a newspaper with statewide distribution which is also published on the Internet and one printed in the county in which the person had last lived for one year. Such notice shall be published at least once per week for 4 consecutive weeks. Such other notice shall be given to relatives as the judge may order. The notice shall give the name, age, and such other characteristics and descriptions as shall identify the person, and shall call for information concerning him or her.

4 Administration of Estates. RSA 553:19 is repealed and reenacted to read as follows:

553:19 Presumption of Death. In the absence of a death certificate, the fact of death may be established after an evidentiary hearing if the court finds by clear and convincing evidence:

I. That the person is presumed to have been killed as a result of some catastrophic event but his or her body could not be recovered; or

II. That the person has been absent for a continuous period of 3 years, during which time he or she has not been heard of or from, and whose absence is not satisfactorily explained after diligent search or inquiry. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

SENATOR EATON (In the Chair): In my former business, I never made the mistake of "presuming" them.

SENATOR BURLING: Thank you, Mr. President.

SENATOR FOSTER: Thank you, Mr. President. I move SB 43 ought to pass with amendment. SB 43 deals with the administration of estates of persons who are presumed dead by liberalizing the appointment of administrators and the issuance of death certificates when the body cannot be found. Unfortunately, there are certain circumstances when this does come into play such as the tragic events of September 11th, the recent tsunami disaster and airplane crashes. The bill provides for the court to consider a catastrophic event where evidence can be brought forward that a particular individual was involved. The committee amendment clarifies the threshold, "clear and convincing evidence" for the court to find the person to have died. It requires publication, not only in the print media, but also over the Internet, to allow for the possibility that an individual may simply be missing, and was not in the natural disaster. The Judiciary Committee asks your support of the bill with amendment. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 134, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders. Judiciary Committee. Ought to pass with amendment, Vote 5-1. Senator Clegg for the committee.

Senate Judiciary

March 30, 2005

2005-0970s

01/09

Amendment to SB 134

Amend the title of the bill by replacing it with the following:

AN ACT relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

Amend the bill by replacing all after the enacting clause with the following:

1 Medical Decision Making for Adults Without Capacity to Make Health Care Decisions for Themselves. RSA 137-J is repealed and reenacted to read as follows:

CHAPTER 137-J

MEDICAL DECISION MAKING FOR ADULTS
WITHOUT CAPACITY TO MAKE HEALTH CARE DECISIONS

137-J:1 Purpose and Policy.

I. The state of New Hampshire recognizes that a person has a right, founded in the autonomy and sanctity of the person, to control the decisions relating to the rendering of his or her own medical care. In order that the rights of persons may be respected even after such persons lack the capacity to make health care decisions for themselves, and to encourage communication between patients and their attending physicians or ARNPs, the general court declares that the laws of this state shall recognize the right of a competent person to make a written declaration:

(a) Delegating to an agent the authority to make health care decisions on the person's behalf, in the event such person is unable to make those decisions for himself or herself, either due to permanent or temporary lack of capacity to make health care decisions;

(b) Instructing his or her attending physician or ARNP to provide, withhold, or withdraw life-sustaining treatment, in the event such person is near death or is permanently unconscious.

II. All persons have a right to make health care decisions, including the right to refuse cardiopulmonary resuscitation. It is the purpose of the "Do Not Resuscitate" provisions of this chapter to ensure that the right of a person to self-determination relating to cardiopulmonary resuscitation is protected, and to give direction to emergency services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.

137-J:2 Definitions. In this chapter:

I. "Advance directive" means a document allowing a person to give directions about future medical care or to designate another person to make medical decisions if he or she should lose the capacity to make health care decisions. The term "advance directives" shall include living wills and durable powers of attorney for health care.

II. "Advanced registered nurse practitioner" or "ARNP" means a registered nurse who is licensed in good standing in the state of New Hampshire as having specialized clinical qualifications as provided in RSA 326-B:10.

III. "Agent" means an adult to whom authority to make health care decisions is delegated under an advance directive.

IV. "Artificial nutrition and hydration" means invasive procedures such as, but not limited to the following: nasogastric tubes; gastrostomy tubes; intravenous feeding or hydration; and hyperalimentation. It shall not include the natural ingestion of food or fluids by eating and drinking.

V. "Attending physician or ARNP" means the physician or advanced registered nurse practitioner, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient. If more than one physician or advanced registered nurse practitioner shares that responsibility, any one of those physicians or advanced registered nurse practitioners may act as the attending physician or ARNP under the provisions of this chapter.

VI. "Capacity to make health care decisions" means the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care.

VII. "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

VIII. "Commissioner" means the commissioner of the department of health and humans services.

IX. "Do not resuscitate identification" means a standardized identification necklace, bracelet, card, or written medical order that signifies that a "Do Not Resuscitate Order" has been issued for the principal.

X. "Do not resuscitate order" or "DNR order" (also known as "Do not attempt resuscitation order" or "DNAR order") means an order that, in the event of an actual or imminent cardiac or respiratory arrest, chest compression and ventricular defibrillation will not be performed, the patient will not be intubated or manually ventilated, and there will be no administration of resuscitation drugs.

XI. "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions executed in accordance with the provisions of this chapter. It shall not mean forms routinely required by health and residential care providers for admissions and consent to treatment.

XII. "Emergency services personnel" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics or other emergency services personnel, providers, or entities acting within the usual course of their professions.

XIII. "Health care decision" means informed consent, refusal to give informed consent, or withdrawal of informed consent to any type of health care, treatment, admission to a health care facility, any service or procedure to maintain, diagnose, or treat an individual's physical or mental condition except as prohibited in this chapter or otherwise by law.

XIV. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.

XV. "Life-sustaining treatment" means any medical procedures or interventions which utilize mechanical or other artificial means to sustain, restore, or supplant a vital function which, in the written judgment of the attending physician or ARNP, would serve only to artificially postpone the moment of death, and where the person is near death or is permanently unconscious. "Life-sustaining treatment" includes, but is not limited to, the following: mechanical respiration, kidney dialysis or the use of other external mechanical or technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics. "Life-sustaining treatment" shall not include the administration of medication, natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

XVI. "Living will" means a document which, when duly executed, contains the express direction that no life-sustaining treatment be given when the person executing said document has been diagnosed and certified in writing by the attending physician or ARNP to be near death or permanently unconscious, without hope of recovery from such condition and is unable to actively participate in the decision-making process.

XVII. "Near death" means an incurable condition caused by injury, disease, or illness which is such that death is imminent and the application of life-sustaining treatment would, to a reasonable degree of medical certainty, as determined by the attending physician or ARNP, only postpone the moment of death.

XVIII. "Permanently unconscious" means a lasting condition, indefinitely without improvement, in which thought, awareness of self and

environment, and other indicators of consciousness are absent as determined to a reasonable degree of medical certainty by the attending physician or ARNP.

XIX. "Physician" means a medical doctor licensed in good standing to practice in the state of New Hampshire pursuant to RSA 329.

XX. "Principal" means a person 18 years of age or older who has executed an advance directive pursuant to the provisions of this chapter.

XXI. "Residential care provider" means a "facility" as defined in RSA 161-F:11, IV, a "nursing home" as defined in RSA 151-A:1, IV, or any individual or facility licensed, certified, or otherwise authorized or permitted by law to operate, for profit or otherwise, a residential care facility for adults, including but not limited to those operating pursuant to RSA 420-D.

XXII. "Witness" means a person 18 years or older who is present when the principal signs an advance directive.

137-J:3 Freedom From Influence.

I. No health care provider or residential care provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall charge a person a different rate because of the existence or non-existence of an advance directive or do not resuscitate order, or require any person to execute an advance directive or require the issuance of a do not resuscitate order as a condition of admission to a hospital, nursing home, or residential care home, or as a condition of being insured for, or receiving, health or residential care services. Health or residential care services shall not be refused because a person is known to have executed an advance directive or have a do not resuscitate order.

II. The execution of an advance directive or issuance of a do not resuscitate order pursuant to this chapter shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired, modified or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured person notwithstanding any term of the policy to the contrary.

137-J:4 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Advance Directives

137-J:5 Scope and Duration of Agent's Authority.

I. Subject to the provisions of this chapter and any express limitations set forth by the principal in an advance directive, the agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make.

II. An agent's authority under an advance directive shall be in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician or ARNP, and filed with the name of the agent in the principal's medical record. When and if the principal regains capacity to make health care decisions, such event shall be certified in writing by the principal's attending physician or ARNP, noted in the principal's medical record, the agent's authority shall terminate, and the authority to make health care decisions shall revert to the principal.

III. If the principal has no attending physician or ARNP for reasons based on the principal's religious or moral beliefs as specified in his or her advance directive, the advance directive may include a provision that a person designated by the principal in the advance directive may certify in writing, acknowledged before a notary or justice of the peace, as to the lack of decisional capacity of the principal. The person so designated by the principal shall not be the agent, or a person ineligible to be the agent.

IV. The principal's attending physician or ARNP shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment. Notwithstanding that an advance directive is in effect and irrespective of the principal's lack of capacity to make health care decisions at the time, treatment may not be given to or withheld from the principal over the principal's objection.

V. Nothing in this chapter shall be construed to give an agent authority to:

(a) Consent to voluntary admission to any state institution;

(b) Consent to a voluntary sterilization; or

(c) Consent to withholding life-sustaining treatment from a pregnant principal, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.

137-J:6 Requirement to Act in Accordance with Principal's Wishes and Best Interests. After consultation with the attending physician or ARNP and other health care providers, the agent shall make health care decisions in accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally or otherwise communicated by the principal, or, if the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests and in accordance with accepted medical practice.

137-J:7 Provider's Responsibilities.

I. A principal's health care provider or residential care provider, and employees thereof, having knowledge of the principal's advance directive shall be bound to follow the directives of the principal's designated agent to the extent they are consistent with this chapter and the advance directive, and to the extent they are within the bounds of responsible medical practice.

(a) An attending physician or ARNP, or other health care provider or residential care provider, who is requested to do so by the principal shall make the principal's advance directive or a copy of such document a part of the principal's medical record.

(b) Any person having in his or her possession a duly executed advance directive or a revocation thereof, if it becomes known to that person that the principal executing the same is in such circumstances that the terms of the advance directive might become applicable, shall forthwith deliver the same to the health care provider or residential care provider with which the principal is a patient.

II. A principal's health care provider or residential care provider who is aware of the principal's execution of an advance directive shall, as appropriate to the principal's medical condition and without delay, take the necessary steps to provide for written verification of the principal's

lack of capacity to make health care decisions, and/or near death or permanently unconscious condition, as applicable, so that the principal's agent may be authorized to act pursuant to this chapter.

III. Prior to the agent making a health care decision for the principal, the principal's health care provider or residential care provider shall provide the agent with the following information regarding the agent's responsibilities:

(a) The agent shall, at all times, make health care decisions that are consistent with what the principal would have wanted, if reasonably known, had the principal had the capacity to make health care decisions.

(b) If the principal's wishes cannot reasonably be ascertained, the agent shall, in consultation with the attending physician or ARNP, make health care decisions that are in the best interest of the principal, which may include withholding or withdrawing treatment.

(c) The agent shall be informed by the principal's attending physician or ARNP regarding any health care decision the agent makes for the principal, and the agent shall consider the nature and consequences, including the risks, benefits and reasonable alternatives of that health care decision.

IV. When the direction of an agent requires an act or omission contrary to the moral or ethical principles or other standards of a health care provider or residential care provider of which the principal is a patient or resident, the health care provider shall allow for the transfer of the principal and the appropriate medical records to another health care provider chosen by the principal or by the agent and shall incur no liability for its refusal to carry out the terms of the direction by the agent; provided, that, the health care provider or residential care provider shall inform the agent of its decision not to participate in such an act or omission.

137-J:8 Restrictions on Who May Act as Agent. A person may not exercise the authority of agent while serving in one of the following capacities:

I. The principal's health care provider or residential care provider.

II. A nonrelative of the principal who is an employee of the principal's health care provider or residential care provider.

137-J:9 Confidentiality and Access to Protected Health Information.

I. Health care providers, residential care providers, and persons acting for such providers or under their control, shall be authorized to;

(a) Communicate to an agent any medical information about the principal, if the principal lacks the capacity to make health care decisions, necessary for the purpose of assisting the agent in making health care decisions on the principal's behalf.

(b) Provide copies of the principal's advance directives as necessary to facilitate treatment of the principal.

II. Subject to any limitations set forth in the advance directive by the principal, an agent whose authority is in effect shall be authorized, for the purpose of making health care decisions, to:

(a) Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute any releases or other documents which may be required in order to obtain such medical information.

(c) Consent to the disclosure of such medical information.

137-J:10 Withholding or Withdrawal of Life-Sustaining Treatment.

I. In the event a health care decision to withhold or withdraw life-sustaining treatment, including artificial nutrition and hydration, is to

be made by an agent, and the principal has not executed the "Living Will" component of the advance directive document, the following additional conditions shall apply:

(a) The principal's attending physician or ARNP shall certify in writing that the principal lacks the capacity to make health care decisions.

(b) The principal's attending physician or ARNP shall certify in writing that the principal is near death or is permanently unconscious.

(c) Notwithstanding the capacity of an agent to act, the agent shall make a good faith effort to explore all avenues reasonably available to discern the desires of the principal including, but not limited to, the principal's advance directive, the principal's written or spoken expressions of wishes, and the principal's known religious or moral beliefs.

II. The withholding or withdrawal of life-sustaining treatment pursuant to the provisions of this chapter shall at no time be construed as a suicide or murder for any legal purpose. Nothing in this chapter shall be construed to constitute, condone, authorize, or approve suicide, assisted suicide, mercy killing, or euthanasia, or permit any affirmative or deliberate act or omission to end one's own life or to end the life of another other than to permit the natural process of dying of those near death or in a permanently unconscious condition as provided in this chapter. The withholding or withdrawal of life-sustaining treatment in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the principal's condition.

III. Nothing in this chapter shall be construed to condone, authorize, or approve:

(a) The withholding of life-sustaining treatment from or to permit any affirmative or deliberate act or omission to end the life of a pregnant woman by an attending physician or ARNP when such attending physician or ARNP has knowledge of the woman's pregnant condition, unless, to a reasonable degree of medical certainty, as certified on the principal's medical record by the attending physician or ARNP and an obstetrician who has examined the principal, such treatment or procedures will not maintain the principal in such a way as to permit the continuing development and live birth of the fetus or will be physically harmful to the principal or prolong severe pain which cannot be alleviated by medication.

(b) The arbitrary withholding or withdrawing of life-sustaining treatment from mentally incompetent or developmentally disabled persons.

IV. Nothing in this chapter shall impair or supersede any other legal right or responsibility which any person may have to effect life-sustaining treatment in any lawful manner.

V. Nothing in this chapter shall be construed to revoke or adversely affect the privileges or immunities of health care providers or residential care providers and others to provide treatment to persons in need thereof in an emergency, as provided for under New Hampshire law.

VI. This chapter shall not be construed to create a presumption that in the absence of an advance directive, a person wants life-sustaining treatment to be either taken or withdrawn. Nor shall this chapter be construed to supplant any existing rights and responsibilities under the law of this state governing the conduct of physicians or ARNPs in consultation with patients or their families or legal guardians in the absence of an advance directive.

137-J:11 Liability for Health Care Costs. Liability for the cost of health care provided pursuant to the agent's decision shall be the same as if the health care were provided pursuant to the principal's decision.

137-J:12 Immunity.

I. No person acting as agent pursuant to an advance directive shall be subjected to criminal or civil liability for making a health care decision on behalf of the principal in good faith pursuant to the provisions of this chapter and the terms of the advance directive if such person exercised such power in a manner consistent with the requirements of this chapter and New Hampshire law.

II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, shall be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct for:

(a) Any act or intentional failure to act, if the act or intentional failure to act is done pursuant to the dictates of an advance directive, the directives of the principal's agent, and the provisions of this chapter, and said act or intentional failure to act is done in good faith and in keeping with reasonable medical standards pursuant to the advance directive and in accordance with this chapter; or

(b) Failure to follow the directive of an agent if the health care provider or residential care provider or other such person believes in good faith and in keeping with reasonable medical standards that such directive exceeds the scope of or conflicts with the authority of the agent under this chapter or the contents of the principal's advance directive.

III. Nothing in this section shall be construed to establish immunity for the failure to exercise due care in the provision of services or for actions contrary to the requirements of this chapter or other laws of the state of New Hampshire.

IV. For purposes of this section, "good faith" means honesty in fact in the conduct of the transaction concerned.

137-J:13 Use of Statutory Forms.

I. Every person wishing to execute an advance directive shall be provided with a disclosure statement substantially in the form set forth in RSA 137-J:18 prior to execution. The principal shall be required to sign a statement acknowledging that he or she has received the disclosure statement and has read and understands its contents.

II. An advance directive executed on or after the effective date of this chapter shall be substantially in the form set forth in RSA 137-J:19.

III. Artificial nutrition and hydration shall not be withdrawn or withheld under an advance directive unless there is a clear expression of such power in the document.

137-J:14 Execution and Witnesses.

I. The advance directive shall be signed by the principal in the presence of either of the following:

(a) Two or more subscribing witnesses, neither of whom shall, at the time of execution, be the agent, the principal's spouse or heir at law, attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP. No more than one such witness may be the principal's health or residential care provider or such provider's employee. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the advance directive was signed and that the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily; or

(b) A notary public or justice of the peace, who shall acknowledge the principal's signature pursuant to the provisions of RSA 456 or RSA 456-A.

II. If the principal is physically unable to sign, the advance directive may be signed by the principal's name written by some other person in the principal's presence and at the principal's express direction.

137-J:15 Revocation.

I. An advance directive consistent with the provisions of this chapter shall be revoked:

(a) By written revocation delivered to the agent or to a health care provider or residential care provider expressing the principal's intent to revoke, signed, and dated by the principal; by oral revocation in the presence of 2 or more witnesses, none of whom shall be the principal's spouse or heir at law; or by any other act evidencing a specific intent to revoke the power, such as by burning, tearing, or obliterating the same or causing the same to be done by some other person at the principal's direction and in the principal's presence;

(b) By execution by the principal of a subsequent advance directive;

(c) By the filing of an action for divorce, legal separation, annulment or protective order, where both the agent and the principal are parties to such action, except when there is an alternate agent designated, in which case the designation of the primary agent shall be revoked and the alternate designation shall become effective. Re-execution or written re-affirmation of the advance directive following a filing of an action for divorce, legal separation, annulment or protective order shall make effective the original designation of the primary agent under the advance directive; or

(d) By a determination by a court under RSA 506:7 that the agent's authority has been revoked.

II. A principal's health or residential care provider who is informed of or provided with a revocation of an advance directive shall immediately record the revocation, and the time and date when he or she received the revocation, in the principal's medical record and notify the agent, the attending physician or ARNP, and staff responsible for the principal's care of the revocation. An agent who becomes aware of such revocation shall inform the principal's health or residential care provider of such revocation. Revocation shall become effective upon communication to the attending physician or ARNP.

137-J:16 Documents from Other States; Documents Executed Prior to Enactment. Nothing in this chapter limits the enforceability of a durable power of attorney for health care or living will or similar instrument validly executed under prior New Hampshire law or in another state or jurisdiction in compliance with the law of that state or jurisdiction. However, any exercise of power under such a previously valid or foreign advance directive or similar instrument shall be restricted by and in compliance with the requirements of this chapter and the laws of the state of New Hampshire.

137-J:17 Naming of Multiple Agents. If the principal lists more than one person as the agent in a durable power of attorney for health care document, the agents shall have authority in priority of the order in which their names are listed on the document.

137-J:18 Durable Power of Attorney; Disclosure Statement. The disclosure statement which must accompany a durable power of attorney for health care shall be in substantially the following form:

INFORMATION CONCERNING THE DURABLE
POWER OF ATTORNEY FOR HEALTH CARE THIS IS
AN IMPORTANT LEGAL DOCUMENT.
BEFORE SIGNING IT, YOU SHOULD KNOW
THESE IMPORTANT FACTS:

Except if you say otherwise in the document, this document gives the person you name as your health care agent the power to make any and all health care decisions for you when you lack the capacity to make health care decisions for yourself (in other words, you no longer have the ability to understand and appreciate generally the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care). "Health care" means any treatment, service or procedure to maintain, diagnose or treat your physical or mental condition. Your health care agent, therefore, will have the power to make a wide range of health care decisions for you. Your health care agent may consent (in other words, give permission), refuse to consent, or withdraw consent to medical treatment, and may make decisions about withdrawing or withholding life-sustaining treatment. Your health care agent cannot consent to or direct any of the following: commitment to a state institution, sterilization, or termination of treatment if you are pregnant and if the withdrawal of that treatment is deemed likely to terminate the pregnancy, unless the treatment will be physically harmful to you or prolong severe pain which cannot be alleviated by medication.

You may explain in this document any treatment you do not want, or any treatment you want to be sure you receive. Your health care agent's power will begin when your doctor certifies that you lack the capacity to make health care decisions (in other words, that you are not able to make health care decisions). If for moral or religious reasons you do not want to be treated by a doctor or to be examined by a doctor to certify that you lack capacity, you must say so in the document and you must name someone who can certify your lack of capacity. That person cannot be your health care agent or alternate health care agent or any person who is not eligible to be your health care agent. You may attach additional pages to the document if you need more space to state your wishes.

If you want to give your health care agent power to withhold or withdraw artificial nutrition and hydration, you must say so in your document. Otherwise, your health care agent will not be able to direct that. Under no conditions will your health care agent be able to direct the withholding of food and drink that you are able to eat and drink normally.

Your health care agent will be guided by your oral and written instructions in this document when making decisions for you. Unless you state otherwise in the document, your agent will have the same power to make decisions about your health care as you would have had, if those decisions by your health care agent are made consistent with state law.

It is important that you discuss this document with your doctor or other health care providers before you sign it, to make sure that you understand the nature and range of decisions which could be made for you by your health care agent. If you do not have a health care provider, you should talk with someone else who is knowledgeable about these issues and can answer your questions. Check with your community hospital or hospice for trained staff. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you choose as your health care agent should be someone you know and trust, and he or she must be at least 18 years old. If you choose your health or residential care provider (such as your doctor, advanced registered nurse practitioner, or an employee of a hospital, nursing home, home health agency, or residential care home, other than a relative), that person will have to choose between acting as your health care agent or as your health or residential care provider, because the law does not allow a person to do both at the same time.

You should consider choosing an alternate health care agent, in case your health care agent is unwilling, unable, unavailable or not eligible to act as your health care agent. Any alternate health care agent you choose will then have the same authority to make health care decisions for you.

You should tell the person you choose that you want him or her to be your health care agent. You should talk about this document with your health care agent and your doctor or advanced registered nurse practitioner and give each one a signed copy. You should write on the document itself the people and institutions who will have signed copies. Your health care agent will not be liable for health care decisions made in good faith on your behalf.

EVEN AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AS LONG AS YOU ARE ABLE TO DO SO, AND TREATMENT CANNOT BE GIVEN TO YOU OR STOPPED OVER YOUR CLEAR OBJECTION. You have the right to revoke the power given to your health care agent by telling him or her, or by telling your health care provider, orally or in writing, that you no longer want that person to be your health care agent.

This document cannot be changed or modified. If you want to make changes, you must make an entirely new document.

THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR TWO (2) OR MORE QUALIFIED WITNESSES, WHO MUST BOTH BE PRESENT WHEN YOU SIGN AND WHO WILL ACKNOWLEDGE YOUR SIGNATURE ON THE DOCUMENT. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- _____ The person you have designated as your health care agent;
- _____ Your spouse or heir at law;
- _____ Your attending physician or ARNP, or person acting under the direction or control of the attending physician or ARNP;

ONLY ONE OF THE TWO WITNESSES MAY BE YOUR HEALTH OR RESIDENTIAL CARE PROVIDER OR ONE OF YOUR PROVIDER'S EMPLOYEES.

137-J:19 Advance Directive; Durable Power of Attorney and Living Will; Form. An advance directive in its individual "Durable Power of Attorney for Healthcare" and "Living Will" components shall be in substantially the following form:

NEW HAMPSHIRE ADVANCE DIRECTIVE

NOTE: This form has two sections.

You may complete both sections, or only one section.

I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

I, _____, hereby appoint _____ of _____ (Please choose only one person. If you choose more than one agent, they will have authority in priority of the order their names are listed.) as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document

or as prohibited by law. This durable power of attorney for health care shall take effect in the event I lack the capacity to make my own health care decisions.

In the event the person I appoint above is unable, unwilling or unavailable, or ineligible to act as my health care agent, I hereby appoint _____ of _____

a _____ s
alternate agent. *(Please choose only one person. If you choose more than one alternate agent, they will have authority in priority of the order their names are listed.)*

STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS REGARDING HEALTH CARE DECISIONS.

For your convenience in expressing your wishes, some general statements concerning the withholding or removal of life-sustaining treatment are set forth below. (Life-sustaining treatment is defined as procedures without which a person would die, such as but not limited to the following: mechanical respiration, kidney dialysis or the use of other external mechanical and technological devices, drugs to maintain blood pressure, blood transfusions, and antibiotics.) There is also a section which allows you to set forth specific directions for these or other matters. If you wish, you may indicate your agreement or disagreement with any of the following statements and give your agent power to act in those specific circumstances.

A. LIFE-SUSTAINING TREATMENT.

1. If I am near death and permanently lack the capacity to make health care decisions, I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

_____ (a) life-sustaining treatment not be started, or if started, be discontinued.

-or-

_____ (b) life-sustaining treatment continue to be given to me.

2. Whether near death or not, if I become permanently unconscious I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

_____ (a) life-sustaining treatment not be started, or if started, be discontinued.

-or-

_____ (b) life-sustaining treatment continue to be given to me.

B. ARTIFICIAL NUTRITION AND HYDRATION.

1. I realize that situations could arise in which the only way to allow me to die would be to not start or to discontinue artificial feeding (artificial nutrition and hydration). In carrying out any instructions I have given in this document, I authorize my agent to direct that:

(Initial beside your choice of (a) or (b).)

_____ (a) artificial nutrition and hydration not be started or, if started, be discontinued.

-or-

_____ (b) even if all other forms of life-sustaining treatment have been withdrawn, artificial nutrition and hydration continue to be given to me.

(If you fail to complete item B, your agent will not have the power to direct the withholding or withdrawal of artificial nutrition and hydration.)

Here you may include any specific desires or limitations you deem appropriate, such as when or what life-sustaining treatment you would want used or withheld, or instructions about refusing any specific types of treatment that are inconsistent with your religious beliefs or are unacceptable to you for any other reason. You may leave this question blank if you desire.

I hereby acknowledge that I have been provided with a disclosure statement explaining the effect of this document. I have read and understand the information contained in the disclosure statement.

Signed this _____ day of _____, 2_____

[If you are physically unable to sign, this document may be signed by someone else writing your name, in your presence and at your express direction.]

We declare that the principal appears to be of sound mind and free from duress at the time the durable power of attorney for health care is signed and that the principal affirms that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness: _____ Address: _____
 Witness: _____ Address: _____

COUNTY OF _____

The foregoing durable power of attorney for health care was acknowledged before me this _____ day of _____, 20_____, by _____ (“the Principal”).

My commission expires:

Declaration made this _____ day of _____, 20_____.

If at any time I should have an incurable injury, disease, or illness and I am certified to be near death or in a permanently unconscious condition by my attending physician or ARNP, and my attending physician or ARNP has determined that my death will occur whether or not life-sustaining treatment is utilized or that I will remain in a permanently unconscious condition and where the application of life-sustaining treatment would serve only to artificially prolong the dying process, I direct

that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication, the natural ingestion of food or fluids by eating and drinking, or the performance of any medical procedure deemed necessary to provide me with comfort care. I realize that situations could arise in which the only way to allow me to die would be to discontinue artificial nutrition and hydration.

In carrying out any instruction I have given under this section, I authorize that:

(Initial beside your choice of (a) or (b).)

- _____ (a) artificial nutrition and hydration not be started or, if started, be discontinued,
- or-
- _____ (b) even if all other forms of life-sustaining treatment have been withdrawn, artificial nutrition and hydration continue to be given to me.

In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this declaration shall be honored by my family and health care providers as the final expression of my right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Signed this _____ day of _____, 2_____.

Principal's Signature: _____
[If you are physically unable to sign, this document may be signed by someone else writing your name, in your presence and at your express direction.]

THIS LIVING WILL DOCUMENT MUST BE SIGNED BY TWO WITNESSES OR A NOTARY PUBLIC.

We declare that the principal appears to be of sound mind and free from duress at the time the living will is signed and that the principal affirms that he or she is aware of the nature of the document and is signing it freely and voluntarily.

Witness:_____ Address: _____
 Witness:_____ Address: _____

STATE OF NEW HAMPSHIRE
 COUNTY OF _____

The foregoing living will was acknowledged before me this _____ day of _____, 20_____, by _____ (the "Principal").

_____, Notary Public/Justice of the Peace
 My commission expires:

137-J:20 Effect of Appointment of Guardian; Inconsistency.
 I. On motion filed in connection with a petition for appointment of a guardian or on petition of a guardian if one has been appointed, the probate court shall consider whether the authority of an agent designated pursuant to an advance directive should be suspended or revoked. In making its determination, the probate court shall take into consideration the preferences of the principal as expressed in the advance

directive. No such consideration shall change the procedures or burden of proof involved in the guardianship process as otherwise provided by law or procedures. In such consideration, the advance directive and agent appointed shall be presumed to be in the best interest of the principal and valid, absent clear and convincing evidence to the contrary.

II. To the extent that a durable power of attorney for health care, or such component of an advance directive as set forth in RSA 137-J:19, conflicts with a terminal care document or living will, or such component of an advance directive as set forth in RSA 137-J:19, the durable power of attorney for health care shall control.

137-J:21 Civil Action.

I. The principal or any person who is a near relative of the principal, or who is a responsible adult who is directly interested in the principal by personal knowledge and acquaintance, including, but not limited to a guardian, social worker, physician, or clergyman, may file an action in the probate court of the county where the principal is located at the time:

(a) Requesting that the authority granted to an agent by an advance directive be revoked on the grounds that the principal was not of sound mind or was under duress, fraud, or undue influence when the advance directive was executed, and shall have all the rights and remedies provided by RSA 506:7 which shall apply to documents executed under this chapter and persons acting pursuant to this chapter.

(b) Challenging the right of any agent who is acting or who proposes to act as such pursuant to this chapter and naming another person, who agrees to so act, to be appointed guardian over the person of the principal for the sole purpose of making health care decisions, as provided for in RSA 464-A.

II. A copy of any such action shall be given in hand to the principal's attending physician or ARNP and, as applicable, to the principal's health care provider or residential care provider. To the extent they are not irreversibly implemented, health care decisions made by a challenged agent shall not thereafter be implemented without an order of the probate court or a withdrawal or dismissal of the court action.

III. The probate court in which such a petition is filed shall hold a hearing as expeditiously as possible.

137-J:22 Penalty. A person who knowingly and falsely makes, alters, forges, or counterfeits, or knowingly and falsely causes to be made, altered, forged, or counterfeited, or procures, aids or counsels the making, altering, forging, or counterfeiting, of an advance directive or revocation of same with the intent to injure or defraud a person shall be guilty of a class B felony, notwithstanding any provisions in title LXII.

Do Not Resuscitate

137-J:23 Applicability. The provisions of this subdivision apply to all persons regardless of whether or not they have completed an advance directive.

137-J:24 Presumed Consent to Cardiopulmonary Resuscitation; Health Care Providers and Residential Care Providers Not Required to Expand to Provide Cardiopulmonary Resuscitation.

I. Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following conditions, of which the health care provider or residential care provider has actual knowledge, apply:

(a) A do not resuscitate order in accordance with the provisions of this chapter has been issued for that person;

(b) A completed advance directive for that person is in effect, pursuant to the provisions of this chapter, in which the person indicated that he or she does not wish to receive cardiopulmonary resuscitation, or his or her agent has determined that the person would not wish to receive cardiopulmonary resuscitation;

(c) A person who lacks capacity to make health care decisions is admitted to a health care facility and the person's agent is not reasonably available or capable of making a decision regarding a do not resuscitate order, and the attending physician or ARNP, and a concurring second physician, have determined that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards, and the attending physician or ARNP has completed a do not resuscitate order; or

(d) A person is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof.

II. Nothing in this section shall be construed to revoke any statute, regulation, or law otherwise requiring or exempting a health care provider or residential care provider from instituting or maintaining the ability to provide cardiopulmonary resuscitation or expanding its existing equipment, facilities, or personnel to provide cardiopulmonary resuscitation.

137-J:25 Issuance of a Do Not Resuscitate Order; Order to be Written by the Attending Physician or ARNP.

I. An attending physician or ARNP may issue a do not resuscitate order for a person if the person, or the person's agent, has consented to the order. A do not resuscitate order shall be issued in writing in the form as described in this section for a person not present or residing in a health care facility. For persons present in health care facilities, a do not resuscitate order shall be issued in accordance with the policies and procedures of the health care facility or in accordance with the provisions of this chapter.

II. A person may request that his or her attending physician or ARNP issue a do not resuscitate order for the person.

III. An agent may consent to a do not resuscitate order for a person who lacks the capacity to make health care decisions. A do not resuscitate order written by the attending physician or ARNP for such a person with the consent of the agent is valid and shall be respected by health care providers and residential care providers.

IV. If an agent is not reasonably available or capable of making a decision regarding a do not resuscitate order, an attending physician or ARNP may issue a do not resuscitate order for a person who lacks capacity to make health care decisions and who is admitted to a health care facility if a second physician who has personally examined the person concurs in the opinion of the attending physician or ARNP that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

V. For persons not present or residing in a health care facility, the do not resuscitate order shall be noted on a medical orders form or in substantially the following form on a card suitable for carrying on the person:

Do Not Resuscitate Order

As attending physician or ARNP of _____ and as a licensed physician or advanced registered nurse practitioner, I order that this person SHALL NOT BE RESUSCITATED in the event of cardiac or respiratory arrest.

This order has been discussed with _____ (or, if applicable, with his/her agent,) _____, who has given consent as evidenced by his/her signature below.

Attending physician or ARNP Name _____

Attending physician or ARNP Signature _____

Address _____

Person Signature _____

Address _____

Agent Signature (*if applicable*) _____

Address _____

VI. For persons residing in a health care facility, the do not resuscitate order shall be reflected in at least one of the following forms:

(a) Forms required by the policies and procedures of the health care facility;

(B) THE DO NOT RESUSCITATE CARD AS SET FORTH IN PARAGRAPH V; OR

(c) The medical orders form.

137-J:26 Compliance with a Do Not Resuscitate Order.

I. Health care providers and residential care providers shall comply with the do not resuscitate order when presented with one of the following:

(a) A do not resuscitate order completed by the attending physician or ARNP on a form as specified in RSA 137-J:25;

(b) Do not resuscitate identification as set forth in RSA 137-J:32;

(c) A do not resuscitate order for a person present or residing in a health care facility issued in accordance with the health care facility's policies and procedures; or

(d) A medical orders form on which the attending physician or ARNP has documented a do not resuscitate order.

II. Pursuant to this chapter, health care providers shall respect do not resuscitate orders for persons in health care facilities, ambulances, homes, and communities within this state.

137-J:27 PROTECTION OF PERSONS CARRYING OUT IN GOOD FAITH A DO NOT RESUSCITATE ORDER; NOTIFICATION OF AGENT BY ATTENDING PHYSICIAN OR ARNP REFUSING TO COMPLY WITH DO NOT RESUSCITATE ORDER.

I. No health care provider or residential care provider, or any person acting for the provider or under the provider's control, or any emergency services personnel, shall be subjected to criminal or civil liability, or be deemed to have engaged in unprofessional conduct, for carrying out in good faith a do not resuscitate order authorized by this chapter on behalf of a person as instructed by the person, or the person's agent, or for those actions taken in compliance with the standards and procedures set forth in this chapter.

II. No health care provider or residential care provider, or any other person acting for the provider or under the provider's control, or emergency services personnel, or other individual who witnesses a cardiac or respiratory arrest shall be subjected to criminal or civil liability for providing cardiopulmonary resuscitation to a person for whom a do not resuscitate order has been issued; provided, that such provider or individual:

(a) Reasonably and in good faith is unaware of the issuance of a do not resuscitate order; or

(b) Reasonably and in good faith believed that consent to the do not resuscitate order has been revoked or canceled.

III. Any attending physician or ARNP who refuses to issue a do not resuscitate order at a person's request or to comply with a do not resuscitate order issued pursuant to this chapter shall take reasonable steps to advise promptly the person or agent of the person that such attending physician or ARNP is unwilling to effectuate the order. The attending physician or ARNP shall thereafter at the election of the person or agent permit the person or agent to obtain another attending physician or ARNP.

137-J:28 Revocation of Do Not Resuscitate Order.

I. At any time a person in a health care facility may revoke his or her previous request for or consent to a do not resuscitate order by making either a written, oral, or other act of communication to the attending physician or ARNP or other professional staff of the health care facility.

II. At any time a person residing at home may revoke his or her do not resuscitate order by destroying such order and removing do not resuscitate identification on his or her person. The person is responsible for notifying his or her attending physician or ARNP of the revocation.

III. At any time an agent may revoke his or her consent to a do not resuscitate order for a person who lacks capacity to make health care decisions who is admitted to a health care facility by notifying the attending physician or ARNP or other professional staff of the health care facility of the revocation of consent in writing, or by orally notifying the attending physician or ARNP in the presence of a witness 18 years of age or older.

IV. At any time an agent may revoke his or her consent for a person who lacks capacity to make health care decisions who is residing at home by destroying such order and removing do not resuscitate identification from the person. The agent is responsible for notifying the person's attending physician or ARNP of the revocation.

V. The attending physician or ARNP who is informed of or provided with a revocation of consent pursuant to this section shall immediately cancel the do not resuscitate order if the person is in a health care facility and notify the professional staff of the health care facility responsible for the person's care of the revocation and cancellation. Any professional staff of the health care facility who is informed of or provided with a revocation of consent pursuant to this section shall immediately notify the attending physician or ARNP of such revocation.

VI. Only a physician or advanced registered nurse practitioner may cancel the issuance of a do not resuscitate order.

137-J:29 Not Suicide or Murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this chapter shall not, for any purpose, constitute suicide or murder. The withholding of cardiopulmonary resuscitation from a person in accordance with the provisions of this chapter, however, shall not relieve any individual of responsibility for any criminal acts that may have caused the person's condition. Nothing in this chapter shall be construed to legalize, condone, authorize, or approve mercy killing or assisted suicide.

137-J:30 Interinstitutional Transfers. If a person with a do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of a do not resuscitate order to the receiving facility prior to the transfer. The written do not resuscitate order, the do not resuscitate card as described in RSA 137-J:25, or the medical orders form shall accompany the person to the health care facility receiving the per-

son and shall remain effective until a physician at the receiving facility issues admission orders. The do not resuscitate card or the medical orders form shall be kept as the first page in the person's transfer records.

137-J:31 Preservation of Existing Rights.

I. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding of cardiopulmonary resuscitation in any lawful manner. In such respect, the provisions of this chapter are cumulative.

II. Nothing in this chapter shall be construed to preclude a court of competent jurisdiction from approving the issuance of a do not resuscitate order under circumstances other than those under which such an order may be issued pursuant to the provisions of this chapter.

137-J:32 Do Not Resuscitate Identification. Do not resuscitate identification as set forth in this chapter may consist of either a medical condition bracelet or necklace with the inscription of the person's name, date of birth in numerical form and "NH Do Not Resuscitate" or "NH DNR" on it. Such identification shall be issued only upon presentation of a properly executed do not resuscitate order form as set forth in RSA 137-J:25, a medical orders form in which a physician or advanced registered nurse practitioner has documented a do not resuscitate order, or a do not resuscitate order properly executed in accordance with a health care facility's written policy and procedure.

2 Emergency Care; Reference Change. Amend RSA 153-A:20, II to read as follows:

II. Protocols recommended by the emergency medical services medical control board for provision of emergency medical care, which shall provide for the provision of local options under medical control. The protocols shall address living wills established under RSA ~~[137-H]~~ **137-J**, durable powers of attorney for health care established under RSA 137-J, and patient-requested, physician generated orders relative to resuscitation.

3 Guardians; Reference Change. Amend RSA 464-A:25, I(d) to read as follows:

(d) If a ward has previously executed a valid living will, under RSA ~~[137-H]~~ **137-J**, a guardian shall be bound by the terms of such document, provided that the court may hold a hearing to interpret any ambiguity in such document. If a ward has previously executed a valid durable power of attorney for health care, RSA 137-J shall apply.

4 Jurisdiction; Reference Change. Amend RSA 547:3, (j) to read as follows:

(j) The interpretation and effect of living wills under RSA ~~[137-H]~~ **137-J**.

5 Repeal. RSA 137-H, relative to living wills, is hereby repealed.

6 Effective Date. This act shall take effect January 1, 2006.

2005-0970s

AMENDED ANALYSIS

This bill revises the laws relative to living wills and durable powers of attorney for health care. This bill also establishes procedures for Do Not Resuscitate Orders.

MOTION TO TABLE

Senator Clegg moved to have SB 134 laid on the table.

Adopted.

LAI D ON THE TABLE

SB 134, relative to medical decision making for those adults without capacity to make health care decisions for themselves and establishing procedures for Do Not Resuscitate Orders.

SB 158, relative to the disclosure of department of revenue administration records for purposes of assisting the state in the recovery of medical assistance. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move Senate Bill 158 inexpedient to legislate. The bill was introduced at the request of Health and Human Services. However, having been unable to obtain sufficient information, the Judiciary Committee asks that the bill be killed and appreciates your support. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 169, relative to access to confidential court records. Judiciary Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that Senate Bill 169 ought to pass. Senate Bill 169 allows the Supreme Court, under certain conditions, to grant access to confidential court records to a person conducting a bona fide research or evaluation project and was requested by the Supreme Court. At certain times, the Court has received grants in order to try pilot programs to see if there is a positive effect. In receiving the funds, the court must agree to submit evaluations to the Governor so that they can have feedback regarding the use, I'm sorry, the grantor, so that they can have feedback regarding the use and effectiveness of the programs. The safeguards for private information would be provided by the court. The Judiciary Committee recommends that the bill be adopted. Thank you very much, Mr. President.

Adopted.**Ordered to third reading.**

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Senate Judiciary**March 31, 2005****2005-0987s****09/01****Amendment to SB 186**

Amend the bill by replacing sections 1 and 2 with the following:

1 New Section; Assignment of Justices. Amend RSA 502-A by inserting after section 5 the following new section:

502-A:5-a Assignment of Judges. After assessing caseload needs and requirements under exigent circumstances and consulting with the administrative judges, the chief justice of the supreme court may assign any district justice to hear cases in the probate court.

2 New Section; Assignment of Judges. Amend RSA 547 by inserting after section 37 the following new section:

547:38 Assignment of Judges. After assessing caseload needs and requirements under exigent circumstances and consulting with the administrative judges, the chief justice of the supreme court may assign any probate court judge to hear cases in the district court.

SENATOR LETOURNEAU: Thank you, Mr. President. I move Senate Bill 186 ought to pass with amendment. Senate Bill 186 allows for probate and district court judges to sit on Probate or District Court cases as assigned by the Chief Justice of the Supreme Court. Currently there are only ten Probate Court judges in the state. If a judge has a conflict of interest and cannot hear a case, or if there is an illness or another emergency, the number of judges available to fill these positions are extremely limited. This legislation is a natural outgrowth of what is already happening in the Family Division. The committee was assured that only judges who have appropriate experience would be called upon to sit in other courts. The Judiciary Committee recommends that this bill be adopted as amended and asks for your support. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 196, establishing a joint legislative committee to study medical malpractice insurance rates. Judiciary Committee. Ought to pass with amendment, Vote 4-2. Senator Foster for the committee.

Senate Judiciary

March 31, 2005

2005-0985s

06/09

Amendment to SB 196

Amend the title of the bill by replacing it with the following:

AN ACT requiring a hearing when medical malpractice insurance rates change.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Rate Filings; Medical Malpractice. Amend RSA 412:16 by inserting after paragraph XIII the following new paragraph:

XIV.(a) For medical malpractice insurance, regardless of whether the market is competitive or noncompetitive, the commissioner shall notify the public of any filing for a rate change when the proposed rate adjustment increases the then applicable rate by more than 15 percent or when the proposed rate adjustment decreases the then applicable rate by more than 15 percent.

(b) The commissioner shall hold a hearing on the rate adjustment upon receipt of a timely request.

(c) The rate change shall be deemed approved under rules established according to the provisions of RSA 412:43 unless the rate filing is disapproved by the commissioner.

(d) Public notice under subparagraph (a) shall be made through distribution to the news media and to any member of the public who requests placement on a mailing list for that purpose.

2 New Paragraphs; Rulemaking Authority. Amend RSA 412:43 by inserting after paragraph II the following new paragraphs:

III. The commissioner shall adopt rules under RSA 541-A relative to the conduct of hearings under RSA 412:16, XIV which shall include the definition of a timely request for a hearing, timelines for scheduling hearings, and procedures to prevent delays in commencing or continuing the hearings.

IV. The commissioner shall adopt rules under RSA 541-A relative to time periods for approvals of filings under RSA 412:16, XIV.

3 Effective Date. This act shall take effect 60 days after its passage.

2005-0985s

AMENDED ANALYSIS

This bill requires the commissioner of insurance to hold a public hearing, if requested, when medical malpractice insurance rates change by more than 15 percent from the currently applicable rates.

SENATOR FOSTER: Thank you, Mr. President. I move SB 196 ought to pass with amendment. SB 196 was introduced as a study committee relative to the cost of malpractice insurance. There is a House Bill dealing with exactly the same subject matter, so with the prime sponsor's consent, the Judiciary Committee amended the bill to try to address the cost of medical malpractice insurance immediately. The amendment allows for public hearings whenever medical malpractice insurance filing is submitted with a rate increase of over 15 percent. This practice has been working very well in other **TAPE CHANGE** our attention. In fact, some believe it has been one of the most successful reforms put in place to moderate rate increases. The rising cost of medical malpractice insurance is impacting doctors' ability to practice medicine in certain areas and needs to receive greater scrutiny. One way to achieve this is to require public hearings when significant rate increases are filed. The Insurance Department has been consulted about this bill and helped write the amendment. The Judiciary Committee supports the bill with amendment and asks for your support. Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator Foster, can you tell me what other states have implemented this law?

SENATOR FOSTER: I got the idea from California. The state of California had it. It was written up in an article in the *New York Times* about their various reforms, and the sense of, at least the article reporting on people they were talking to out there was this had helped quite a bit to moderate rates.

SENATOR GATSAS: Thank you.

Recess.

Out of recess.

SENATOR GREEN: Thank you, Mr. President. I voted in committee against this piece of legislation. I am going to vote for it in the full chamber. The reason is, in the committee format, I had just received the bill. It was a complete rewrite of the bill as we originally had received it. I had not had an opportunity to look at it. I just indicated that, as courtesy, I would have liked to have had some time to look at it. I know we all deal with that issue of getting stuff late. We did it on 134 just a minute ago. We tabled it. People wanted...now that is a much larger bill obviously, okay. Now I don't blame anybody. I am not blaming, that is not the point. The point is, that I am going to vote for this because now I have had time to look at it, and I agree with it. Okay? So my vote against the bill was not on the issue; it was on procedure. It has not had a public hearing. I also have a problem with that as an issue in my mind, but the merits of the bill are good. I intend to vote for the bill. Thank you.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Gatsas.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Johnson.

Yeas: 23 - Nays: 1

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SB 205, relative to private actions under the consumer protection act. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: I move Senate Bill 205 inexpedient to legislate. The prime sponsor appeared at the public hearing and requested that the bill be killed. The Judiciary Committee asks your support. Thank you.

Committee report of inexpedient to legislate is adopted.

SB 214, relative to screening panels for medical injury claims. Judiciary Committee. Ought to pass with amendment, Vote 4-2. Senator Foster for the committee.

Senate Judiciary

April 5, 2005

2005-1019s

06/01

Amendment to SB 214

Amend the bill by replacing all after the enacting clause with the following:

1 New Chapter; Screening Panels for Medical Injury Claims. Amend RSA by inserting after chapter 519-A the following new chapter:

CHAPTER 519-B

SCREENING PANELS FOR MEDICAL INJURY CLAIMS

519-B:1 Findings, Purpose, and Intent.

I. Availability and affordability of insurance against liability for medical injury is essential for the protection of patients as well as assuring availability of and access to essential medical and hospital care. This chapter affirms the intent of the general court to contain the costs of the medical injury reparations system and to promote availability and affordability of insurance against liability for medical injury. Claims for medical injury should be resolved as early and inexpensively as possible to contain system costs. Claims that are resolved before court determination cost less to resolve than claims that must be resolved by a court. Meritorious claims should be identified as quickly as possible, as should non-meritorious claims. Defendants should consider paying or compromising meritorious claims and plaintiffs should consider withdrawing or compromising non-meritorious claims, as soon as the merits of the claims are known to the parties. Presentation of claims to a medical review panel is intended to help identify both meritorious and non-meritorious

claims without the delay and expense of a court trial. It is essential to the effectiveness of the panel process that panel proceedings be confidential unless and until a matter heard by a panel proceeds to trial. It is equally essential to the effectiveness of the panel process that a panel's unanimous findings be presented to the jury in any matter that is not resolved prior to trial. The panel process will encourage the prompt resolution of claims, because both sides will be given an objective view of the merits. If the panel finds that a claim has merit, the defendant will be more likely to pay the claim or negotiate a compromise that is favorable to the claimant. If the panel finds that the claim lacks merit, the claimant is more likely to withdraw the claim or accept a nominal settlement.

II. The purposes of pretrial screening panels are:

(a) To identify claims of professional negligence which merit compensation and to encourage early resolution of those claims prior to commencement of a lawsuit; and

(b) To identify claims of professional negligence and to encourage early withdrawal or dismissal of nonmeritorious claims.

519-B:2 Definitions. In this chapter:

I. "Action for medical injury" means an action for medical injury as defined in RSA 507-E:1, I.

II. "Medical care provider" means a medical care provider as defined in RSA 507-E:1, II.

III. "Medical injury" means a medical injury as defined in RSA 507-E:1, III.

519-B:3 Formation and Procedure.

I. The chief justice of the superior court shall maintain a list of retired judges, persons with judicial experience, and other qualified persons to serve on screening panels under this chapter, from which he or she shall choose a panel chairperson under paragraph II of this section. The chief justice of the superior court shall maintain lists of health care practitioners, and attorneys with litigation experience primarily representing plaintiffs in actions for personal injury, recommended by their respective professional organizations and associations, or otherwise volunteering to serve on screening panels under this chapter. As required by the chief justice, the professional organizations and associations shall inform the chief justice of the names of volunteers to serve on panels.

II. Screening panel members shall be selected as follows:

(a) Upon the entry of a medical injury case, the clerk of the superior court in which the medical injury case is filed shall notify the chief justice of the superior court.

(b) Within 14 days following the return date, the chief justice shall choose a retired judge, a person with judicial experience, or other qualified person from the list maintained by the chief justice to serve as chairperson of the panel to screen the claim. If at any time a chairperson chosen under this paragraph is unable or unwilling to serve, the chief justice shall appoint a replacement following the procedure in this paragraph for the initial appointment of a chairperson.

(c) The chief justice shall notify the clerk of the name of the person designated to serve as chairperson and shall provide the clerk with the lists of health care practitioners, health care providers, and attorneys maintained under this section. Upon notification of the chief justice's choice of chairperson, the clerk shall notify the chairperson and the parties, and provide them with the lists of health care practitioners, health care providers, and attorneys. The chairperson shall choose 2 additional panel members as follows:

(1) One attorney.

(2) One health care practitioner.

(3) When agreed upon by all the parties, the list of available panel members may be enlarged in order to select a panel member who is agreed to by the parties but who is not on the chief justice's list.

III. The screening panel process shall not delay or postpone the trial of a medical injury case except by agreement of the parties. The superior court may establish a trial date at a structuring conference, or other scheduling conference, and all interim deadlines as it would in any other case.

IV. The chief justice of the superior court shall establish the compensation of the panel chairperson if he or she is not otherwise compensated by the state of New Hampshire. Other panel members shall serve without compensation or payment of expenses.

V. The clerk of the superior court in the county in which a medical injury case is filed shall, with the consent of the chief justice of the superior court, provide clerical and other assistance to the panel chairperson.

VI.(a) Only challenges for cause shall be allowed. Each panel member shall provide a curriculum vitae to counsel for the litigants and disclose any connection the member may have with the litigants or their counsel.

(b) If a panel member other than the chairperson is challenged for cause, the party challenging the member shall notify the panel chairperson. If the panel chairperson finds cause for the challenge, he or she shall replace the panel member.

(c) If the chairperson is challenged for cause, the party challenging the chairperson shall notify the chief justice of the superior court. If the chief justice finds cause for the challenge, he or she shall replace the chairperson.

519-B:4 Panel Procedures.

I. All documents filed with the court in a medical injury action that are part of the screening process are confidential.

II. Within 20 days after the return date, the person or persons against whom the action has been brought shall contact the claimant's counsel and by agreement shall designate a timetable for the exchange of all the relevant medical and provider records necessary to a determination by the panel. If the parties are unable to agree on a timetable within 40 days of the return date, the claimant shall notify the chairperson of the panel. The chairperson shall then establish a timetable for the exchange of all relevant records, which shall be exchanged no later than 90 days from the return date. The hearing shall be no later than 6 months from the return date, unless agreed to by the parties.

III. The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by trial.

IV. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel. Both parties may agree to bypass the panel for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel shall have no jurisdiction to hear or decide, absent agreement of the parties, dispositive legal affirmative defenses, other than comparative negligence.

V. Except as otherwise provided in this section, there shall be one combined hearing for all claims under this section arising out of the

same set of facts. Where a medical injury case has been filed against more than one person accused of medical injury based on the same facts, the parties may, upon agreement of all parties, require that hearings be separated.

VI. All requests for extensions of time under this section shall be made to the panel chairperson. The chairperson may extend any time period for good cause, except that the chairperson may not extend any time period that would result in the hearing being held more than 7 months following the return date unless misconduct of the plaintiff makes the hearing impractical or acts or events occur which the panel determines are beyond the control of the litigants. If the hearing cannot be held within the 7-month time period due to any other reason, it shall be deemed to have been waived.

VII.(a)(1) On failure of the plaintiff to prosecute or to comply with rules or any order of the chairperson, or if the plaintiff fails to attend a properly scheduled hearing, and on motion by the chairperson or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chairperson may order appropriate sanctions, which may include dismissal of the case. If any sanctions are imposed, the chairperson shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chairperson or the panel in an order for dismissal specifies otherwise, a dismissal under this subparagraph is with prejudice for purposes of proceedings before the panel. A dismissal with prejudice is the equivalent of a finding for the defendant on all issues before the panel.

(b)(1) On failure of a defendant to comply with the rules or any order of the chairperson, or if a defendant fails to attend a properly scheduled hearing, and on motion by the chairperson or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chairperson may order appropriate sanctions, which may include default. If any sanctions are imposed, the chairperson shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chairperson or the panel in its order for default specifies otherwise, a default under this paragraph is the equivalent of a finding against the defendant on all issues before the panel.

(c) Any person aggrieved by a chairperson's ruling regarding sanctions may appeal to the superior court, which shall defer to the chairperson's factual findings unless they are clearly erroneous.

519-B:5 Hearing.

I.(a) The claimant or a representative of the claimant shall present the case before the panel by offer of proof and submission of expert witness reports. The person accused of professional negligence or that person's representative shall make a responding presentation by offer of proof and submission of his or her expert witness reports. Any report to be submitted shall be exchanged at least 45 days prior to the hearing and an additional report may be prepared by the opposing expert in reply.

(b) After presentation by the parties, the panel may request additional facts, records, or other information from either party to be submitted in writing within 14 days.

II. The panel shall maintain a tape-recorded record. Except as provided in RSA 519-B:8, the record may not be made public and the hearings may not be public without the consent of all parties.

III. The chairperson of the panel shall attempt to mediate any differences of the parties before proceeding to findings.

519-B:6 Findings by Panel.

I. At the conclusion of the presentations, the panel shall make its findings regarding negligence and causation in writing within 30 days by answering the following questions:

(a) Whether the acts or omissions complained of constitute a deviation from the applicable standard of care by the medical care provider charged with that care;

(b) Whether the acts or omissions complained of proximately caused the injury complained of; and

(c) If fault on the part of the medical care provider is found, whether any fault on the part of the patient was equal to or greater than the fault on the part of the provider.

II. In considering the questions under paragraph I, the panel shall credit the party bringing the medical injury claim with all reasonable inferences that can be drawn from the evidence.

519-B:7 Notification of Findings. The panel's findings, signed by the panel members, indicating their vote, shall be sent by registered or certified mail to the parties within 7 days of the date of the findings. The findings and record of the hearing shall be preserved until 30 days after final judgment or final resolution of the case, after which time it shall be destroyed. All medical and provider records shall be returned to the party providing them to the panel.

519-B:8 Confidentiality and Admissibility.

I. Except as provided in this section, all proceedings before the panel, including its final determinations, shall be treated as private and confidential by the panel and the parties to the claim.

(a) The findings and other writings of the panel and any evidence and statements made by a party or a party's representative during a panel hearing are not admissible in court and shall not be submitted or used for any purpose in a subsequent trial and shall not be publicly disclosed, except as follows:

(1) Any testimony or writings made under oath may be used in subsequent proceedings for purposes of impeachment.

(2) The party who made a statement or presented evidence may agree to the submission, use, or disclosure of that statement or evidence.

(b) In the reasonable discretion of the trial court, if the panel findings as to any question under RSA 519-B:6 are unanimous and unfavorable to the plaintiff, the findings are admissible in any subsequent trial of the medical injury case.

II. The confidentiality provisions of this section shall not apply if the findings were influenced by fraud.

III. The deliberations and discussion of the panel shall be privileged and confidential, and no panel member may be asked or compelled to testify at a later court proceeding concerning the deliberations, discussions, or findings, except such deliberation and discussion as may be required to prove an allegation of fraud.

519-B:9 Mandatory Instructions.

I. When panel findings are offered and admitted into evidence in a subsequent court action in accordance with RSA 519-B:8, I(b), the trial court shall provide the following information to the jury to provide a

basis for the jury to understand the nature of the panel findings and to put the panel findings in context in evaluating all of the evidence presented at the trial:

(a) The panel process is a preliminary procedural step through which malpractice claims proceed.

(b) The panel in this case consisted of (insert the name and identity of the members).

(c) The panel conducts a summary hearing based on offers of proof and review of documentary evidence only without the benefit of live witness testimony and is not bound by the rules of evidence.

(d) The hearing is not a substitute for a full trial and did not include all of the evidence that is presented at the trial.

(e) The jury is not bound by the findings of the panel and it is the jurors' duty to reach their own conclusions based on all of the evidence presented to them.

(f) The panel proceedings are privileged and confidential. Consequently, the parties may not comment on the panel findings or proceedings except as provided in subparagraphs (a) through (e).

II. The information specified in paragraph I shall be provided to the jury when the findings are admitted into evidence and when the court instructs the jury prior to submitting the case to the jury.

519-B:10 Effect of Panel Findings. Unanimous findings entered by the panel under RSA 519-B:6, I shall be implemented as follows.

I. If findings are in the plaintiff's favor, the defendant may promptly enter into negotiations to pay the claim or admit liability. If liability is admitted, the claim may be submitted to the panel, upon agreement of the parties, for determination of damages.

II. If the findings are in the defendant's favor, the plaintiff shall release the claim or claims based on the findings, without payment, or be subject to the admissibility of those findings in the discretion of the trial court, under RSA 519-B:8, I(b).

519-B:11 Medical Malpractice Panel and Insurance Oversight Committee Established.

I. There is established a committee to study medical malpractice insurance rates in this state and the mandatory panels for medical injury claims process.

II. The committee shall consist of 4 members of the senate appointed by the senate president, and 4 members of the house of representatives, appointed by the speaker of the house of representatives. The house members shall include at least:

(a) One member of the house judiciary committee.

(b) One member of the house health, human services and elderly affairs committee.

(c) One member of the house commerce committee.

III. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Five members of the committee shall constitute a quorum.

IV. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

V. The committee shall review and analyze information provided by the administrative office of the courts and the insurance department related to medical injury liability claim activity in order to determine the effectiveness of mandatory screening panels for medical injury claims established in this chapter. The committee's review shall

include, but not be limited to, whether medical malpractice insurance premiums have been affected and whether there has been any limitation of access to the courts by injured parties.

VI.(a) The committee shall make an interim report of its findings about medical liability insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2008.

(b) The committee shall make a final report of its findings about medical liability insurance rates and the mandatory panel process and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2010. The report shall include a recommendation to terminate, continue, or amend RSA 519-B.

519-B:12 Reports.

I.(a) The administrative office of the courts shall collect data on medical injury claims and submit a report on the screening panel process to the committee established in RSA 519-B:11 and to the insurance commissioner on or before September 30 of each year.

(b) The report required by this paragraph shall include the number of medical injury cases filed, pending, and resolved; and the number of panel hearings and the number of panel hearing days during the fiscal year ending on the June 30 preceding the report date.

(c) The report required by this paragraph shall also include, for medical injury cases resolved during the fiscal year:

(1) The mean and median lengths of time from initial filing to final resolution.

(2) The number and average settlement amount of cases that were resolved prior to the panel hearing.

(3) The number and average settlement amount of cases that were resolved after a panel hearing but before a trial.

(4) The number and average settlement amount of cases that were resolved by or after a jury verdict.

(d) The report required by this paragraph shall also include, for medical injury cases in which a panel made findings during the fiscal year, the number of cases that fell into each category of possible results of a panel hearing (unanimous for the plaintiff; majority for the plaintiff; unanimous for the defendant; majority for the defendant), the status, and, if applicable, the results of the cases in each category.

(e) To the extent possible, the report required by this paragraph shall include comparative data from the previous 5 years.

II.(a) The insurance commissioner shall report to the committee established in RSA 519-B:11 annually, on or before November 1 of each year, on the medical malpractice market and the effects of the panel process established in this chapter. Such reports shall include, but not be limited to, the average rates of medical liability insurance for categories of medical providers and specialties identified by the insurance commissioner, the frequency and severity of medical injury claims, and the time for resolution of medical injury claims from first notice to final resolution.

(b) The insurance commissioner may adopt rules to collect the data from insurers necessary to prepare the report required by this paragraph. To the extent the commissioner collects information from insur-

ers regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner and available to the public, such information shall be treated as examination materials, kept confidential, and not be subject to RSA 91-A.

2 Repeal. RSA 519-A, relative to professional malpractice claims, is repealed.

3 Repeal. The following are repealed:

I. RSA 519-B:11, relative to the medical malpractice panel and insurance oversight committee.

II. RSA 519-B:12, relative to reports.

4 Effective Date.

I. Section 3 of this act shall take effect December 31, 2010.

II. The remainder of this act shall take effect 60 days after its passage.

SENATOR FOSTER: Thank you, Mr. President. I move SB 214 ought to pass with amendment. This bill has been here before. It was here last session and essentially, it is exactly the same shape that it was introduced here this time around. It was rejected as drafted twice by the Judiciary Committees that heard the bill for many, many hours. Last year, as we know, it was amended, this body overturned that amendment and ultimately, the bill died in Committee of Conference. The amendment that is before you today is based upon a careful assessment of the testimony. It preserves most of SB 214 as drafted, but makes changes to address some of the legitimate concerns that came up at the hearing. The bill calls, as drafted, for a panel which has a judge, a trial lawyer and a person in the healthcare field to screen cases. That has been retained. The bill had a time limitation for panels to go forward, and that has been shortened in the amendment somewhat. One of the biggest concerns we heard of the people testifying is that, in the state of Maine, you can often take a year and a half or more, sometimes over two years to get to the panel. We also heard the testimony about the cost involved about putting together a panel hearing. This bill streamlines that. Rather than having what is effectively, a full blown trial before the panel, with live witness testimony, cross examination, and all of that, this amendment calls for, is each party to prepare expert witness reports, exchange those reports, allow them to be reviewed and commented on, and for those to be submitted to a panel of a judge, a medical doctor and a lawyer, along with offers of proof. So it is a much scaled down process and a much less costly process to go forward so we don't in effect, have two trials. And the panel results are effectively preserved as they were in the bill with a change that I will get to later on, but admissibility is preserved. If the panel were to find that a case is completely without merit unanimously, that would be admitted to a jury in a subsequent trial. But again, that is only if it is completely without merit. So where is the change coming from where you are being asked not to support this amendment? It is on the standard of proof. The bill as originally drafted, provides effectively that the plaintiff has to prove their case to a panel. Has to prove it in a way that you would have to do with a case tried to a jury. Be it more probable than not, or by preponderance of the evidence, which the way it currently reads in the bill, you effectively have to prove your case. And, if the doctor, the judge and the lawyer decide that your case is not winnable, not that it doesn't have merit, but if they decide unanimously that it is not winnable, that you are not going to win that case, a jury hears about that. That caused the majority of the members of the Judiciary Committee concern. The concern is that it tampers in a sig-

nificant way with our state Constitution. Our state Constitution speaks in terms of the right to a jury trial as being "SACRED". Those are the words in our state Constitution. "The right to trial by jury is sacred." Sacred means, I looked it up in *Webster's* this week, "worthy of worship". Pretty strong words. I'll note that the Maine Constitution does not have that language. It has similar language, but doesn't have the same language. That might be why in Maine, the bill as drafted has worked, and I suspect, with one point or another challenged and found constitutional. Our Constitution, the way it is written, says "trust our citizens with property disputes", "trust our citizens with breach of contract cases", "trust our constituents to decide how cases ought to be decided." Don't turn that over to special interest groups or individuals with alphabet soup after their name. Try the case to regular citizens and let them decide. So as I said, 214, as it is drafted, tells us no, don't trust the jury. You first got to go to a bunch of experts and prove your case. If they unanimously find your case isn't any good, the jury hears about that. Think how you would feel if you were on a jury and you learned that a guy with a black robe, somebody who practices medicine, and a trial lawyer said "this case isn't winnable". You think it might affect your view of that case? I know that it would. So what this amendment does is it brings the standard of proof down. It is designed to screen out the completely merit less cases. It basically says that the expert witness reports and offers of proof that are put forward are assessed in a manner in which you give the benefit of the doubt to the plaintiff on the evidence. If there is disputing...if the evidence is disputed as to whether there is liability or not, you give the benefit of the doubt and drop all reasonable inferences. Not all inferences, but all reasonable inferences in the favor of the person bringing the claim. What does that do? The claim has no merit at all. It doesn't go forward without admitting that finding. But there is no requirement that you prove at that stage of the proceeding, that your case is a winner; just that it has some merit and that our constituents, our citizens, ought to be able to decide that dispute. So I would ask your support for this amendment. I think it will allow this process to go forward, and hopefully, we once and for all, can deal with this issue in a way that addresses some of the problems that are being raised, and we can move on to this and other things. Thank you very much, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Senator, can you tell me, does any other state use this form?

SENATOR FOSTER: I have been told by other folks that it is similar to what goes on in the state of Florida and some people have said, although I haven't checked it out, that other states use something similar to this. I can tell you this, I know of no state, none, that does what Maine does.

SENATOR GATSAS: Can you tell me if Florida's Constitution is similar to New Hampshire's?

SENATOR FOSTER: I have not looked at that.

SENATOR GATSAS: Thank you.

SENATOR GALLUS: Mr. President, thank you very much. Members of the Senate, I would urge you to vote no on the amendment and to pass the original bill which has been sponsored by a majority of the members of the state Senate and I thank you.

SENATOR GREEN: Thank you, Mr. President. Mr. President and my Senate colleagues, I rise in opposition to the proposed amendment to

Senate Bill 214. The changes offered in committee makes a number of changes. The most significant is that it places the lower standard of proof that the panel must use. If you explain this in the Senate Committee, that standard is equivalent to a grand jury's probable cause determination of whether or not an indictment is necessary. This lower standard in the current bill, without the amendment, resembles a Massachusetts system that is not considered a successful panel system. Why in the world would this body adopt a system on one that does not work in another state when Senate Bill 214 as introduced is based on a system of a state that does work? Another significant change in the amendment weakens the strength of the original bill which is in the area of admissibility. When you deal with admissibility, my discussion in the committee was that if you are going to have admissibility, it should be admissibility for all parties. Under this bill, only the plaintiff's admissibility is allowed. It doesn't make sense to me as a real fairness issue. The amendment would leave the admissibility of a unanimous panel decision to the reasonable discretion of a trial judge or court. I am not sure what that means other than the judge is going to decide whether it is admissible or not. Mr. President, as a sponsor of Senate Bill 214, I believe that the proposed amendment serves to undermine the effectiveness of the original bill and greatly changes the bill that all sponsors signed onto. I would ask you to please defeat the amendment on the floor and vote for Senate Bill 214 as introduced. We have had this discussion before. We know what the issue is. We passed this bill last year and we should be passing it again. It is the position the Senate is taking, and I think it is the right position. I would ask your support in defeating the current amendment on the floor. Thank you.

SENATOR MARTEL: Thank you, Mr. President. Senator Green, would that...establishing these panels, would the insurance companies establish these panels as another step towards finding liability in any case?

SENATOR GREEN: Not that I am aware of. The law as it is currently doesn't require anybody to have a panel. This is a change in the process. So I don't see that that would happen.

SENATOR MARTEL: Okay. So the Insurance Department or the Commissioner of Insurance or in the legal process here with getting this panel for an injury claim in place, would be dependent then on strictly the defendant and the claimant. Is that correct?

SENATOR GREEN: Well, I guess. Again, if there is a claim, then they would have to go, based on this legislation, they would have to go before the panel and the panel would decide whether this case should go forward.

SENATOR MARTEL: Okay. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise in support of the committee amendment. I, like most everybody in this chamber, want very much to address the issue of medical malpractice liability insurance and the rising cost and the difficulty some parts of our state are having in keeping specialists as a result. I have supported the concept of screening panels for some time. I have been concerned with the original bill, Senate Bill 214, because of my concern about the constitutional issue that my colleague Senator Foster raised. 214, by allowing the admissibility of unanimous rulings by these panels, to juries, prejudices the jury, and it is not something we do in any other area of the law. I am

also a veteran of screening panels in other areas of the law that do get rid of most frivolous cases. I have supported other mechanisms of screening panels where it makes sense. I think it makes sense in this arena because I think our physicians are in a particular spot. They are the fulcrum, if you will, of a real crisis we have, which is we don't take care of people with long term injuries and chronic disabilities well. People who are injured have incentives to sue a physician because there is an income stream from the liability converge. That is a real problem that we all need to address from a number of fronts. However, when I have talked with supporters of 214 who have contacted me about this amendment, what has really come to light is that they don't support screening panels. They want to do away with the jury system altogether for medical liability cases. I have real concerns about that. I am willing to discuss it. If they want to tell me that doctors and medical malpractice cases are in such an unusual position that those cases should never go to a jury, let's have that discussion as a public policy issue. Let's think about amending our Constitution and I'll have that discussion. I revere doctors; I have doctors in my family and certainly doctors throughout New Hampshire have taken superb care of my children, and especially my one child who is a very complicated medical case. But, if that is the discussion that we need to have because the effect of 214 as originally introduced, will mean that almost no medical malpractice cases go to a jury, even the ones that are gray, let's have that discussion. The amendment offered by Senator Foster is a true screening panel. They do work in other states. There is good reason to believe that they will decrease the number of frivolous suits, get rid of them and settle the lower cases sooner. But I cannot support the original 214 because of the constitutional issue that it invokes. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. As a member of the Judiciary Committee, I sat through five hours of testimony and listened to it very intently. With all due respect to my friend from Berlin, many of the sponsors of this bill were not in attendance and did not hear the testimony. One piece of testimony that struck me as very significant and, if you will bear with me, it is only a paragraph long, I will read it. This is from an attorney who represents a woman in a court case in Maine, where we hear so much great things about this panel. I will quote, "I represent a young woman, she was about 18 or 19 years old when she was presented. She was pregnant and she went into the Henrietta D. Gooddall Hospital for the delivery of that child. She was in labor and she had a number of signs and symptoms of preeclampsia pregnancy and they did not deliver her child. They kept her there for several days without performing an emergency caesarian section. As a result, her blood pressure went through the roof, she had a stroke and she has been legally blind since June of 1998. Approximately two years later, in June of 2002, we filed a claim on her behalf and I have been waiting since of that filing for a claim of June 2002 to the present, to have a screening panel impaneled, so that I could get her day in court. Win, lose or draw, she has a right to have her case taken to a jury and have the members of her community sitting as a jury, and decide whether there has been malpractice or not." I think that we can all agree that this young lady has been waiting two years, is blind, has been blinded due to medical malpractice, and she has yet to have a panel impaneled. Even after the panel is impaneled, how long will it take to get it into a court? Five years? Ten years? Who knows.

What we're talking about here is people's lives. I agree, we've got to do something about malpractice. I think we all agree on that, but what we do is important. We just can't just scratch the surface. We have to do something right. I hope you take this into consideration when you vote on this today. Thank you.

SENATOR GATSAS: Senator Letourneau, that was a heartfelt case that you just read. Being one of the members that voted in favor of the amendment, would you think it would be proper for, other than a pediatrician, somebody that would be a podiatrist, to be sitting on that panel, to hear that case?

SENATOR LETOURNEAU: Well that is interesting, Senator Gatsas. Thank you for the question. He went on to explain that one of the reasons why they can't impanel somebody in this position is because there is only four physicians who deliver babies in that area and all of them have the same attorney, so they can't do it. They can't sit on the panel.

SENATOR GATSAS: So why would the amendment then remove a specialist from being on that panel and just any physician?

SENATOR LETOURNEAU: I don't know if you need a physician to decide whether or not this young lady has been wronged. I think that you will find merit in this case and send it forward to trial.

SENATOR GATSAS: Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. Mr. President and Senate colleagues, I rise in opposition to the proposed amendment on Senate Bill 214. As a member of the Senate Health Committee, I am very concerned about access to care in our state. I worry about our citizens, my constituents and your constituents being at risk when they need medical care. Throughout our state, including the southern tier, obstetrical care is becoming harder to find. Just as important is our access to general surgical care. One Manchester hospital out of nine general surgeons, seven are over the age of 55. The area is having difficulty recruiting new doctors because of the high medical malpractice premiums in their rates. Radiology practices are having difficulty recruiting new doctors to the point where they advertise that the new doctor won't have to read mammograms to help him or her avoid potential failure to diagnosis breast cancer cases. I hope that you share my concerns for access to specialty care in New Hampshire by supporting Senate Bill 214 without the amendment. I thank you. Mr. President, I am a co-sponsor on this amendment. But I surely...based on the facts that I have received since then, can see where I would never have signed on as a co-sponsor of the bill, had I known all these facts, and more facts besides. So I urge my colleagues to please just pass the bill as is. Thank you very much, Mr. President.

SENATOR CLEGG: Thank you, Mr. President. As I see it, we have a choice - we can get something or we can get nothing. First, the Maine legislature is now looking to do something else because this panel hasn't work so well up there. They're now looking at putting caps on awards to try to bring the malpractice problem under control. Maine, typically, after their panel process, the loser, regardless of which side it is, goes to trial court and changes all of its expert witnesses so it has a second chance. So it didn't do any good there either. We were told in the hearing that no matter what we do, there will be no reduction in medical malpractice insurance rates. They don't just use New Hampshire doc-

tors to set their rates. They go outside because they consider us to be too small of a community to rate separately. The big part is, while the lobbyists don't want to compromise and sit down, and I will tell you, this is the second year, I have never seen this happen before in the eleven years that I have been here. The medical community has contacted some of us and has said, "We would rather have something. Let's move forward. We do want to work with the trial lawyers. We do want to get something done, because it is they who are actually affected by this." Next year I will have a bill that talks about a lobbying malpractice panel to see if we can't fix that. But here is the biggest problem...a panel for everything. Here's the biggest problem, the House already rejected the bill that you would have us send over if you don't for this amendment. Only 43 people voted to maintain this original bill. Everyone else in the House that day said, "No, we're not doing that." But we have talked to the Judiciary Committee over in the House, and they said, "You send us something over that looks like you're working towards a compromise and we will sit with you and try to finish it. If you send us what we just killed, then there is no sense in doing anything." So the question is, pass the amendment, pass the bill as amended, and work with the House and see if this time we can get something or pass over the original bill understanding fully that that ends the discussion this year, we get nothing, and the guys who suffer are the doctors, because the trial lawyers will still make their money, the lobbyists will still make their money, the insurance companies are going to always make money, and the doctor is the loser. I urge you to vote for the amendment. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. I was approached by a couple of lobbyists who said to me, "If this amendment passes, we want the bill dead." I rise to say I am a sponsor 214. I am going to vote for this amendment. In 1990, I was the Chairman of the House Civil Subcommittee in charge of Malpractice. I have been doing this for fifteen years. It's time we did something. This panel proposal is a good panel proposal. It will accelerate the management of these cases. It will winnow out the bad ones. It will get us to meaningful negotiations on those medical malpractice cases where merit and fault are in fact unclear and settlement is appropriate. One final thing I would like to say to my good friend from Senate District Six. You know, yes, this panel does treat admissibility different, depending on who you are. If you're the plaintiff and all three members of the panel rule against the concept of your claim being meritorious, you're out. You're done, 'cause in the jury trial, that information is going to be presented to the jury. If you're the plaintiff, and all three members say, "You're right, medical malpractice caused your injury, you're entitled to \$100,000". That's not admissible. This is weighted towards the protection of the medical profession and the hospitals and, where appropriate, their insurance company. I believe that is appropriate, because I believe ultimately, as Senator Hassan said, this is about preserving the jury trial while providing a mechanism for going forward more effectively, with the bad cases winnowed out. That's my rationale. That is why I am voting yes on this amendment.

SENATOR FULLER CLARK: Thank you very much, Mr. Speaker (sic) and members of the Senate. I rise to speak in favor of the amendment. In my experience in the House and in the legislature over the last twelve years, I have learned that the way that we move forward is through compromise. I believe that the amendment that has been offered by Senator Foster is a good compromise. Let me remind you that it retains the key components of Senate Bill 214. It retains a panel composed of a judge,

a lawyer and a physician. It retains a standard of proof, but it creates a standard of proof that is going to protect the plaintiff who does not have the resources to mount full blown trials. Three, it retains admissibility, but admissibility in a way that recognized that the New Hampshire Constitution, with its language to protect the sacredness of the jury, is acknowledged. And finally, it means that we can put in place a mechanism that will screen out those frivolous cases that everyone is concerned about that are putting our juries, our doctors, our patients, and our lawyers in a situation they need not be in. But I would also like to echo the words of Senator Clegg. One of the reasons that we have heard that we need to pass these panels is because they will reduce the cost of medical malpractice. There is no guarantee that that will happen in this bill. I would hope that we, as legislators, will come together to look at other avenues where perhaps we can provide appropriate recourse to those subspecialties that are being forced out of practice by the very high rates of medical malpractice that they are being asked to pay. Those are our neurosurgeons and our obstetricians and gynecologists in particular. There are solutions we could look at just as how we have looked at to address the issue of providing risk pools for those in the insurance market. We could look at the possibility of creating some sort of a pool to assist those subspecialties who can no longer afford their medical malpractice premiums. We could look at the fact that our physicians are being squeezed on both sides, by high medical malpractice insurance rates, and by the loss of Medicaid and Medicare reimbursements, and by the fact that other insurance companies are not paying the insurance claims to doctors on time. So the doctors are getting squeezed at both ends. This is only one piece of a much larger and more difficult issue that we are facing in the state and the country, and that we are all going to have to agree to work together if we are going to address the issue of ever increasing insurance costs, healthcare costs, and medical malpractice costs. But I urge you today to look at this amendment as the type of compromise that we can put forward that means we can at least begin to have one piece of that puzzle in place. Thank you.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Clegg.

Seconded by Senator Green.

The following Senators voted Yes: Burling, Eaton, Gottesman, Foster, Clegg, Larsen, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Bragdon, Gatsas, Barnes, Martel, Morse.

Yeas: 11 - Nays: 13

Amendment failed.

The question is on the motion of ought to pass.

A roll call was requested by Senator Gatsas.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Bragdon, Larsen, Gatsas, Barnes, Martel, Estabrook, Morse, Fuller Clark.

The following Senators voted No: Eaton, Gottesman, Foster, Clegg, Letourneau, D'Allesandro, Hassan.

Yeas: 17 - Nays: 7

Adopted.

Ordered to third reading.

SB 81, providing recourse for homeowners in manufactured housing parks who are confronted with unjustifiable rent increases. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 4-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move Senate Bill 81 inexpedient to legislate. Senate Bill 81 seeks to address rental increases in mobile home parks. While the committee recognizes there is a problem in mobile home parks, it does not feel this bill, as it is now, addresses this problem and instead feels this bill may be a form of rent control. The committee worked long and hard with each party to reach a compromise that would not be rent control and would have allowed for some grievance process. However, we regret to inform this body, despite the Herculean efforts of some members of this committee, including Senator Burling and Senator Larsen, a compromise could not be reached. The Public and Municipal Affairs Committee recommends a vote of inexpedient to legislate and I would like to say that this bill, and I think that the credit should go to Senator Roberge who is the chairman of this committee, this bill was in committee for seven weeks, so there was plenty of time for folks to talk and try to get a compromise together. The committee would appreciate your support on the inexpedient to legislate motion.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the committee vote of inexpedient to legislate and I just briefly want to give a little history. This is a dispute which has been going on for well on ten years. At the core of this dispute is an inability of some tenants of some manufactured housing parks to get access to either justice or fairness from their landlord. The evidence was unequivocal before the committee. There are some places in this state where we have a serious problem. The people who cause the greatest problems seem to be absentee landlords. There is no question that the vast majority of the owners of parks are good, decent, responsible landlords who care for their tenancies and their parks. There is absolutely nothing in this bill that has anything to do with rent control. It has more to do with the graph zepelin than it has to do with rental control. What is in this bill is a simple effort on the part of some of us to encapsulate in the law the last two positions of folks representing the park owners and folks representing the tenants. What are those things? Very simple. One is a requirement that owners give tenants written leases which state the full tenancy provision, which shall have a term of not less than two years. The other provision is a simple requirement that when 50 percent of the tenants in a given park seek redress from the owner, the owner and the tenants agree to have one mediation session with a mediator that they choose. There is nothing of rent control. There is nothing of compulsion. These were the two provisions which the parties themselves said they believed they could settle on at the penultimate meeting of the committee. I don't know what happened over the weekend after the Friday when we thought we had it all tied up. But something happened or something didn't hap-

pen. After ten years of struggle, Senator Larsen and I believe, and I hope that you will agree with us, that it is time to give these folks some way of laying to rest that battle that has been going on so long. It is not fair to leave people without some resolution. Not fair to leave people, like Vietnam, to argue over the shape of the settlement table for another ten years while the law doesn't respond to their needs. The bill before you is very simple. Written leases, one mediation session, that's all. Thank you. I ask that you overturn the inexpedient to legislate and give us an opportunity to offer you a floor amendment, which is ready to go.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I've not been here as long as Senator Burling, but this has been a situation I've been aware of. I want to give you some history. I am disturbed about this history because, when I was asked to sponsor this bill, that's the day that the word "rent control" came forward. **TAPE CHANGE** I was told by the people that own these parks, "We offered leases two years ago and they will never accept that." So they thought they were on pretty fair grounds. So a lot of pressure was put on by myself and other people, telling these people that own these trailers, "You're going to have to compromise, and you're going to have to go to leases." They think it will work. We think it will work. And they did it. But guess what? Those who came to me in my office and said, "If you get them to do leases, we will go along with it" are no where to be seen. Not fair. Not fair to put me out on a limb, other people on the limb, and say we will go along with this if you can compromise it. Compromise it and they're gone. We ought to overturn this ITL and we ought to look at this amendment, which is not rent control. In fact, those of you who refuse the rent control, I would submit that today, you have used rent control by passing a bill that says if health insurance goes up more than 20 percent, we have health control, we have rent control on health insurance evidently. You also passed a bill today that, if malpractice claims go up more than 15 percent, you have to have a hearing. Why can't we have one mediation for someone who spends maybe their life savings, puts it on somebody else's land, and the rent goes up, and 50 percent of the people in that park think it goes up more. They got one shot at the apple. Come on, ladies and gentlemen, if we can do it for insurance companies, and we can do it for the people buying health insurance, we can do it for the people who have their mobile home sitting on somebody else's land, and it is not rent control. Let's defeat ITL. Let's talk about this amendment, and let's be fair to everybody today, not just a portion of our constituents, but everybody. Thank you.

SENATOR GATSAS: Senator Flanders, if memory serves me correct, probably a year and a half, almost two years ago now, we didn't have that same idea about controlling electric rates because we could have capped electric rates, and this chamber didn't do that. Would you agree that this is no different than that?

SENATOR FLANDERS: I would agree that it is the same as the two caps that we did today.

SENATOR GATSAS: Thank you.

SENATOR LETOURNEAU: Senator Flanders, thank you for taking the question. You are aware that we have the Board of Manufactured Housing in the state of New Hampshire?

SENATOR FLANDERS: I am aware of it.

SENATOR LETOURNEAU: And that they resolve disputes between tenants and park owners?

SENATOR FLANDERS: Well, I don't know that. I have never observed it. I have never had any example of anybody telling me that. I presume they do.

SENATOR LETOURNEAU: Would you believe that they do, if I told you that?

SENATOR FLANDERS: I would believe it if you tell me that.

SENATOR LETOURNEAU: Thank you very much.

SENATOR LARSEN: Thank you, Mr. President. I think it has been mentioned how many years we have been trying to solve this dispute. What really we are trying to do is balance the rights of property owners who are mobile home owners and property owners who are owners of manufactured housing parks. Right now the balance is tilted. I think everyone agrees that that is the case. Sometimes our duty as legislators is to try to rebalance that so that each person has a shot at having their case heard. Senate Bill 81 was brought in as a way to provide some recourse, not for the property manufactured housing parks where they are well run. The Jensen's Parks of this world that we never hear a complaint against. Those aren't the ones that would be addressed in this resolution. In this bill. What we are trying to work on is those who are not part of the board perhaps; those park owners who are outside the dialogue that happens. Several years back when we had this before, 'cause this comes up every year or two, the manufactured housing park owners said to us, "We will create a board. We will create a board and we will have hearings." So they did that. But only members of the board and their tenants can go to that board. As we heard in the hearing process, the very board that we created came to us and said, "Please don't make us have this hearing process created in Senate Bill 81. We are a volunteer board. We can't handle this. We don't have the capacity for this." In the process of the discussions, we heard in the hearing from both the park owners and the park tenants, two things. One, they were willing to look at contracts, leases. They were willing to look perhaps at two years. We called the tenants and said, "They're willing to look at perhaps two years worth of leases, would that be okay for you?" The tenants bent and said, "That's better than nothing. Two years would be okay." We asked for a second step based on mediation. There was a discussion of how would you resolve the disputes of two owners. These are not renters and owners. These are two owners. People who live in manufactured housing parks, own their property. It may be the only property of any value that they own. For many people, it is the only property they can afford in this state to provide a roof over their heads. In many cases...we used to call these mobile homes. They are not mobile. Go look at them. When's the last time you walked through your manufactured housing parks, as I have and as many of you have? More often than not, what I hear when I walk through and go door to door in the parks, is a request, "Please give us some recourse. We are a captive audience. We are stuck here. We bought property. It was the only place we could afford. If we cause problems they are going to evict us. We can't afford to be evicted, but we also have no voice." In one instance in my district, they have increased the rent five times in a year and a half.. Those people are desperate. Those people are calling for mediation. There is nothing I can tell them to do. Four of them who came to the hearing have eviction notices in their mailboxes, and I would bet you anything that they are being evicted because they came and testified at this hearing. Now we need to balance

this. We need to stop. Too often we resolve cases. This is a desperate case. We know there are at least 25,000 people in this state who live in manufactured housing parks. There are 460 parks. Many of those parks are well run. We are not talking about them. We are talking about what happens when 50 percent of those residing in a park are so upset. They are own property there, but they have no voice. We are saying, allow this amendment to come in, defeat the inexpedient to legislate, allow this amendment to come in that says in all cases, park owners would offer a two-year lease, so people could see what their rents were going to be for two years. When you rent an apartment, you know what your lease is going to be. But when you take your property into a mobile home park, there is no guarantee you're going to be offered a lease and that your rent isn't going to go up five times in a year and a half. They have no assurance, but they also have no options often times. They also have no place else to live. We know the housing problems in this state. So what we're asking is for you to defeat the ITL, to allow this amendment to come in which is the agreement, verbally, before our committee that they would both allow a two-year lease and that they would consider some form of mediation. We spent weeks on this bill. When they took it off for a weekend, they got all tied up in what kind of mediation and when you would have mediation. So we simplified it. We said, when 50 percent of the park residents, now that is a big proportion of people, because a lot of people are scared to sign anything that threatens the roof over their heads, but at 50 percent of those residing in a park say they need some help and are desperate and want it, then they get to go to mediation. Mediation one time, is the floor amendment. One mediation session. We aren't asking the park owners to pay for it. It would be split 50/50. It would get the parties to sit down and talk to each other, which is not happening right now. In the case in my district, right now, the owner drives through giving the finger to the residents and the residents have issues of sewer backups and all kinds of other things. There is no one party that is always right. But oftentimes when two parties sit down and mediate, and have a neutral party that can walk them through it, maybe they can get to some agreement so they can get live civilly together. Now, we have heard, and my mailbox has been flooded with some concept that this is a rent control bill. It is absolutely not a rent control bill. If you look at what the floor amendment we are trying to bring in says, it says two-year leases and one mediation session when 50 percent are upset.

PARLIAMENTARY INQUIRY

SENATOR BOYCE: Mr. President. Earlier, I was asked not to speak about an amendment that had not been brought in. Could I ask that the same be brought up at this point?

SENATOR EATON (In the Chair): We can speak about the amendment...if this is defeated, we will speak about the amendment, for point of order. Yes.

SENATOR LARSEN: I need to mention the floor amendment only because I suspect we are going to lose this bill, and I hope that your ears have been opened. There is a desperate problem in this state, that each of you has the ability to change, to focus on. Now we sit in Public Affairs Committee and we tried, but now it is up to you. Now it's your chance to do something that is a very, very moderate little step that will help the whole people of this state. It will balance the rights of many. So I ask you, please consider voting inexpedient to legislate down so that we

can bring in a motion ought to pass with a floor amendment, that is a very small step in correcting what is a very big problem. I once again say, the property owners of this state are very wrong when they assert that we are proposing rent control. The difference between rent, the difference between apartment owners and manufactured housing park owners is that apartment owners are lessors on property owned by someone else. The manufactured housing park, they own their property and they have no mobility. Unlike apartment dwellers, there is no mobility. You cannot pick up and drive your mobile home away unless you have left it on its wheels and it just arrived. Look at those parks, they have aprons, they have plantings, they have investments by people over the years. It is our best option for keeping at least some smidgen of affordable housing in this state and for keeping the peace within those parks. So I urge you to consider inexpedient to legislate, voting down inexpedient to legislate.

SENATOR HASSAN: Thank you, Mr. President. Just briefly. I would echo Senator Larsen's comments about this being a bill that addresses the needs of two sets of property owners, not just one. And just to add, I have spoken with many excellent manufactured housing park owners in my district. They are not the problem, but I have also heard from over thirty residents from one of the parks in my district, who regularly, they receive their rent increases every time the cost of living goes up with their social security check. It is timed impeccably. There is gouging going on. Every time they report something that the park owner has previously agreed to repair, such as dead trees on their lot, all of a sudden the park owner changes the rules and says, "Oh, I am not responsible for that, you have to pay for that." There is an unfair relationship as things currently stand. So I would urge this body to vote against the ITL and to move forward with what I think is a very reasonable approach that the parties agreed to at the hearing. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President and members of the Senate. I rise to speak in favor of Senate Bill 81 as it was originally submitted to this body. This bill was merely an attempt to address the need, to create a more level playing field between park owners and tenants who own their own homes. Currently, the tenants in mobile parks do not have leases, cannot take their rent grievances to the Manufactured Housing Board. They are prevented by law from doing that, and they have no redress but to move if they cannot afford the rent increases that occur, and yet often, they have no place to take their homes. They are a captive audience and they deserve more protection than they have right now. That is what Senate Bill 81 wanted to do. It simply required a park owner to justify his rent increases to the residents of the park and provided a legal recourse which currently mobile home owners do not have, or manufactured home owners do not have, so that, if the increases could not be justified, and were deemed unreasonable by over a third of the tenants in that park, that they could have somewhere else to go. Currently, they have no where else to go legally, and in many cases, physically. We all know that throughout this state, we have an affordable housing crisis. We also know that 25,000 residents in our state, live in manufactured housing. They, in some cases, but clearly not in all cases, need additional protection. I am very disappointed that we were not able to pass Senate Bill 81 as it was originally drafted. It is not rent control. It is about fairness as you have heard, between two sets of owners, where one currently has a great deal more power than

the other. I would urge you to defeat the ITL and at least allow the amendment to come forward so that we can provide some additional protection for manufactured home owners throughout this state. Thank you.

SENATOR BARNES: Thank you, Mr. President. I will make it as brief as I can. As you all know, I am long-winded sometimes, so just give me the signal to quiet down. I am going to give you a little history. 1992 was my first year in the Senate. The first committee I was appointed to was Public Affairs. Guess who the chairman of that committee was? It seems like only yesterday I met Senator Roberge as the chairman of that committee. Every year I have been up here in the Senate, I have been on that committee. I have been fortunate to be there. I have been a selectman in town, I guess that is the reason I was appointed to it. Every session we have a mobile home park bill of some kind or another. It is not, as you heard it earlier, it is not something new. Senator Larsen and I, Senator Roberge, have been on this committee probably the last six years perhaps Senator, and we have gone through the same thing. As you remember, every year we have been able to come up, this committee of ours, has been able to come up with an agreement between both sides of the issue - MOTA and the owners. This time, as I told you a little earlier, seven weeks Senator Roberge kept this in committee. And, as you heard Senator Burling talk, he thought that he put something together and had a deal. He went home Friday night and he said, "I got a deal." He comes in Monday morning and something went pouf. We don't what and we are not going to get into what went pouf, but something went pouf, and it is a darn shame. Early on, when this bill was being introduced, Senator Flanders, Senator Odell were two of the sponsors on it. Senator Hassan I believe, Senator Clark. I had a phone at home, twice, asking me to be on the bill. Now I realize it was rather late at night when I called a certain sponsor and asked the sponsor if he thought it was rent control. After we talked for a couple of minutes, my understanding was that he thought it was too; however, he made it very clear that he was sponsoring this bill because he thought the folks were getting a bad shift and he thought they deserved an opportunity to have a platform to speak on. So you know, rent control here, rent control there. I have always been against rent control. I have never voted for it, and I will never will. I happen to think this is the nose under the tent. Having said that, I represent two towns, Allenstown and Epsom, that happen to have two mobile home parks in them that have been a burr under my saddle since I became a Senator. I have spent a lot of time in both of those parks with the people. I made it perfectly clear at one of the hearings what I thought of the individual who lives up in West Vancouver, British Columbia, what he has done to my constituents and what he hasn't done. He sent me a letter that I went to the town hall in Allenstown and the letter was false statements. The treasurer of the town told me it was a bunch of phooey what he sent to me. He had the numbers in front of him to prove it. "Oh the taxes went up, I have to raise it." I was proved that that hadn't happened. However, Jim Bianco, who is a lobbyist for the homeowners, and Jim has been in our committee meetings I think since 1992. I think we see him and we are going to take him off of our income tax he is there so often. But Jim was sent a letter. Jim heard all the conversations. He knows my feeling on this gentleman. A letter was sent to Jim on St. Patrick's Day, March 17th of this year. Jim was nice enough to supply the committee and myself with a copy of it. I don't know if we got this guy's bell rung or not, but, "Dear Mr. Bianco, I write to thank you for your phone call earlier today regarding a potential voluntary mediation program for manufactured housing community owners and tenants in New

Hampshire. I will be willing to participate in a voluntary mediation based on the information I have received relative to the MCAP proposal supported by NNHMA. I remain willing to work with residents of the communities that I own in New Hampshire, on their concerns relative to rent." Now this letter is going to get published in the two local papers, 'cause I want all the residents of those parks to know that the owner, Mr. Hynes, has committed to this, so the folks in those parks will know it. And I suggest those of you who have other unscrupulous in your opinion, and tenants out there, fellas and gals that own these parks that are not doing right, and Senator Larsen has one right up the street here. I know she has a problem because I got phone calls from that park, some of you may have problems. Put some pressure on. Put some pressure on Jim Bianco. He represents those folks. And have Jim get those folks together and tell them, if they don't shape up in 2006, perhaps this legislature will step up and forget rent control and do something to straighten the thing out that these bad people are doing. Thank you very much, Mr. President.

SENATOR JOHNSON: Senator Barnes, would you believe that, in the thirty-one towns that I represent, I have quite a few mobile home parks?

SENATOR BARNES: I certainly believe that.

SENATOR JOHNSON: And in my fifteen years that I have been here, I have never had a question from anyone in a mobile home park relative to rent. I have it relative to snowplowing, quality of water and those types of things, but never on the rent.

SENATOR BARNES: Senator Johnson, I would believe that. And would you believe I would like you to have some of those mobile home park owners contact Mr. Hynes and see if he'll sell to them so he can come down and take over those two parks?

SENATOR MARTEL: Thank you very much, Mr. President. Mine won't be long either. I rise in opposition to Senate Bill 81. This bill is simply, clearly, rent control. This bill would allow a minority of tenants in a mobile home park to bring a park owner before the Board of Manufactured Housing over a proposed rental increase. We had a long hearing on this bill. We heard, not only from tenants, but also from park owners, property owners and realtors. The Board of Manufactured Housing did not support this bill because it would cost too much. The Board would need more staff, more expertise and more funding for this bill. We asked the park owners and the tenants to try to negotiate a compromise. To their credit, both groups worked hard to find compromise. Unfortunately, no compromise was reached. The amendment was brought before the committee that may be asked for today. That amendment was rejected by the committee. It would have required park owners to submit to mediation for any increase in rent, even one dollar. That is not right. The amendment is very vague. It had no protection for the landowner. There is no balance. The amendment will cause more problems and will cost more money for all those involved. We heard of a few problems in the industry. The amendment will create animosity between the vast majority of good park owners and tenants where there is currently none. I do not believe New Hampshire needs rent control. I do not believe this bill or any amendment should pass. I urge my colleagues to vote against Senate Bill 81. Mr. President, I also sit on the committee and this bill was before us for a total of seven weeks, as was stated earlier. One side of this issue had no willingness to really sit down and compromise to reach a point where there would be an agreement between both sides. I feel

sorry for those people that were involved in this and not being able to reach their conclusion of compromise. There are problems in this state as was stated before, and we know that. I do have some in my district. I went to one park in my district and it is kind of a beat up place. People have been there for a while. When I was speaking to people in the park, I said, "Why are your conditions like this?" They said, "What do you mean our conditions like this? We want them like this, 'cause our taxes won't be increased." I found that to be very odd, Mr. President. Very odd indeed. But some people feel that way. But, in this case here, it was very evident what we saw in committee and what we heard in committee. We were hoping that a compromise could be reached, but it was not. So Mr. President, I thank you for your time and I thank the Senate for it's time.

SENATOR FLANDERS: Very briefly. I've listened and everything I have heard, I'm not sure it fits into what has actually happened. To Senator Barnes, the pouf that happened was that some eight weeks ago, people told me that if we came up with a lease, they would agree to it. When someone just testified that there was no compromise, if we were allowed to talk about the amendment, I believe that there is a great deal of compromise in that amendment. So there was compromise. The compromise went back to what they were told, if they compromised to this position, the opposition would agree to it. As I testified before, they didn't. Not fair. I will tell you that, if this is defeated, I, personally, next year, if I still have two feet on the ground, I will have a bill that will come before this Senate again, that will have leases in it, because we have gotten that far. There is no reason to do it another year. Exactly what both parties told me they wanted is in this amendment. Please, let's defeat the ITL. Let's give these people the same chance, as I said before, as we do the people who are paying health insurance.

Recess.

Out of recess.

The question is on the committee report of inexpedient to legislate.

A roll call was requested by Senator Flanders.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Flanders, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Committee report of inexpedient to legislate is adopted.

SB 88, relative to emergency medical transportation. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Burling for the committee.

Public and Municipal Affairs

March 30, 2005

2005-0971s

10/05

Amendment to SB 88

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Paragraph; Emergency Medical and Trauma Services; Exception. Amend RSA 153-A:16 by inserting after paragraph II the following new paragraph:

III. If a physician determines that an inter-facility transfer of a critical access hospital patient is urgent and the availability of 2 licensed emergency medical services providers exceeds 30 minutes, a registered nurse, certified in emergency nursing and advanced cardiac life support and after completion of an inter-facility training module, may act as the responsible provider for the patient during the transfer.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass with amendment Mr. President and, by way of introduction, I would like to start by saying my personal thanks and congratulations to our chairperson. Here again, a bill that seemed to have more life than topsy, but it represented an ongoing effort to do something good for a small constituency in our state. At the heart of this is the question of who can accompany a patient in a transfer between hospitals? That is the core theme. What I would ask you to do, my colleagues, on behalf of the committee, is support the ought to pass with amendment motion. I will then ask that the question be divided. There is some extraneous material in the text before you, but that's because of a drafting goof. I'll get you there if you'll just stay with me.

Amendment adopted.

The question is on the adoption of the bill as amended.

Senator Burling moved to divide the question.

SENATOR BURLING: Mr. President, I ask that we divide the question. It is currently in three sections. As I read it, the section that was adopted in fact by the committee, is the third, which is...of course I am doing this without the text in front of me. It begins "New Paragraph; Emergency Medical and Trauma Services. If a physician determines". That is the language we need. Is it appropriate? Two. Yes, Section two new paragraph. It is on page four of your yellow calendar. Am I permitted to speak to the meaning of this?

SENATOR EATON (In the Chair): To the bill.

SENATOR BURLING: Okay. This was the subject of a long negotiation between the nursing staff at the Cottage Hospital and Sue Prentice, the Battalion Chief at the Department of Safety. At issue here is what to do in a small, critical access hospital when you have a patient who needs to be transferred to another facility in an ambulance, and you know that the EMTs that you need to accompany that patient, are more than 30 minutes away. This is a concern for those of us who live in rural areas around critical access hospitals. We negotiated back and forth and back and forth and back and forth. We finally came up with this language. It has been vetted by the Department of Safety, the EMT folks, and by the nurses. It is the best we can do and it solves the problem. So I would hope that you would vote down sections one and two and vote...excuse me. All I want to wind up with is paragraph two. What you have here. Vote down section one and vote up ought to pass two and three. Thank you. Sorry.

SENATOR CLEGG: Senator Burling, I just want to make sure I have this correct. We are going to separate section one from the rest of the bill. We should vote no on section one and yes on sections two and three?

SENATOR BURLING: Please.

SENATOR CLEGG: And that gives us what the committee actually intended to send to us today?

SENATOR BURLING: That is correct.

SENATOR CLEGG: Thank you.

SENATOR LARSEN: I simply rise to reiterate that I support section two and will be voting no on section one. We need the effective date as well.

The question was divided without objection.

The question is on the adoption of section one.

Motion failed.

The question is on the adoption of sections two and three.

Adopted.

Ordered to third reading.

SB 225-FN-A, establishing video lottery. Ways and Means Committee. Ought to pass, Vote 3-1. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. It's the last item of the day. I'll be a little lengthy, but I would appreciate your hearing me out. It's been eight years that I have been working on this. It is something that I feel very strongly about, as you know. Let me state a couple of axioms which I think should be in place. Senate Ways and Means did revenues yesterday and, based on what we heard from the agencies, we have a \$275 million deficit. The deficit is \$275.54 million. So this package is an economic recovery package, because axiomatically, we need the money. Now both the House and the Senate have agreed at this point. The Senate has not made its final revenue recommendations. The recommendations of the agencies, as of 4/6/05, give us a \$275 million problem. The genesis of this bill really goes back a long, long way. It probably goes back to 1951 when a man by the name of Representative Pickett from Keene suggested that we introduce a lottery in New Hampshire. I want to read a letter that was dated March 8, 1951 from the Women's Christian Temperance Union in Northwood. "In the Northwood Women's Christian Temperance Union at their meeting held on March 2, 1951, voted unanimously, that they were individually and collectively, against any form of state lottery in New Hampshire, because of the nature of our business, greenhouses," Senator Morse, "I was unable to be present at the hearing on the lottery bill yesterday, but I most certainly want to go on record, however, as opposed to the state lottery." So opposition to the lottery is not something new. The United States of America banned lotteries in 1894. We reinstituted them in New Hampshire in 1963. Governor John King signed the lottery bill. We were the first state in the United States to reinstitute the lottery. In 1933, a thoroughbred race track was initiated at Rockingham Park. I quote from the paper in 1933, "Not only did the track save the town from the despair caused by the great depression, but it also helped to turn a quiet community into a economic engine for south central New Hampshire." That's in 1933. So we are not Johnny come lately when it comes to imposition of good things, good fellowship, good citizenship and good public policy. In 1933, the operator of Rockingham Park wrote a letter to General U.S. Johnson, who was the administrator of the National Recovery Act. We were in a depression at that time. He said at the time that he wanted to enroll the track in a program that put able bodied, unemployed people to work. "We're willing to comply with all regulations" wrote

Smith, "and we are ready to do our part in helping President Roosevelt's wonderful drive onto prosperity. We hope that other race tracks throughout the country will follow." Aside from being a good citizen, and I might say in 1933, although sincere in their generosity, it also made this race track a good corporate citizen. Good reputation was needed because the state was reluctant to sanction gambling. That is in 1933. Rockingham Park went on to subsidize agriculture and subsidize the agricultural fairs in New Hampshire. It did it from 1933 until 1961, because they wanted to be participants in the viability of agriculture in New Hampshire. When Lane Dwinell was Governor of the state of New Hampshire, and we must say that Lane Dwinell not only was Governor, but Speaker of the House and President of the Senate. Governor Dwinell said that when push time came for budget problems, the thing he would do was up the pari-mutuel tax to balance the budget. So we have a history that dates back a long, long way, toward a good partnership between the racing industry and the state of New Hampshire. In the 1970s, we had dog racing initiated in New Hampshire, at Seabrook, Hinsdale and then, at Belmont. What we have now is a situation, and I am sure you have heard about it. Two firms are closing in Salem. We are going to lose 400 jobs from one firm. Going to lose 75 jobs from another firm. We are going to lose 475 jobs. So economic recovery is pretty vital. In the state of New Hampshire over the past years, we have gone from a high of 610,000 jobs to right now, where we have 604,000 jobs. So we've lost about 6,000 jobs. In the manufacturing industry, we have gone from 27,000 jobs to 18,000. Twenty-thousand to eighteen thousand. We have gone from Digital Equipment being the largest employer in the state of New Hampshire to Wal-Mart being the largest public, private employer, in the state of New Hampshire. So what we have had is an economic situation that has changed to some extent. We want to do some good things for New Hampshire. We would like to preserve open space. We want to promote economic viability. We want to promote jobs. We want to bring revenue to the state of New Hampshire. We would like to restore an industry that has been good to New Hampshire. We all favor saving open space. We're all for LCHIP. We want \$10 million in the operating budget for LCHIP. Well farms that existed in southern New Hampshire, have been cut up and sold as house lots. Why? Because it is not viable to breed in New Hampshire. We had the Sire Stakes Program, but we did away with that. When we did away with the Sire Stakes Program, there was no reason to continue breeding and raising animals. This piece of legislation, as an economic recovery package, takes into consideration a premise that has been in place in the state of Delaware since 1994. In 1994, Delaware passed the Horse Racing Redevelopment Act. The then member of the House of Representatives who sponsored this bill is now the Governor of the state of Delaware. So obviously, her popularity was not diminished by emphasizing the fact that the video lottery at the tracks made sense. The state of West Virginia, the state of New Mexico, the state of Iowa, a little portion of the state of New York, a little portion of the state of Rhode Island, have taken this concept and put it into play. Over the course of the last ten years, at a 33 percent tax rate, the state of Delaware has received \$1.3 billion in revenue from the gaming industry at the three tracks. What does our bill do in terms of economic recovery? I gave all of you an extensive package so I don't want to keep reiterating things, but want to get them on the record. Our bill says this. The local municipality must approve this item. Nothing happens without local approval. The people in that community must approve the video

lottery. We are offering it to four tracks and we have three licenses in the north country. Once that community has approved this item, the entity in that community then proceeds to get a license, to apply for a license. The application for that license costs \$100,000. We're not giving them away. One hundred thousand dollars. You must then put up an additional \$50,000 so that the Attorney General will have all of the amenities necessary to investigate the background of the people who have applied for the license. If indeed the investigation costs exceed the \$50,000, you must come up with that money. The renewal fee is \$10,000. Local approval. An investigation by the Attorney General. A \$100,000 fee, and a \$50,000 fee to get yourself examined. How do we share in the proceeds? We give each entity a certain number of machines. You all know them, so I don't have to tell you. We say that 52 percent of the average net machine income will go to the state of New Hampshire. That is the second or third highest tax in the United States. When I look at the taxes that are in place other places, Delaware, it goes between 33 and 35 percent. In Louisiana, it is 15 percent. In Iowa, it is 24 percent. In Maine, it is 10 percent. In New Mexico, it is 25 percent. In New York, it's between 60 and 73 percent, but nobody except one track will accept it. In Pennsylvania **TAPE CHANGE** in Rhode Island, it is 53 percent and, in West Virginia, it is 30 percent. Two percent will go to the municipality in which the video machines are located. Four percent will go to the Pari-Mutuel Commission for a live racing fund. There will be a further distribution of that four percent. Five percent will go to support a horse breeding fund. Three point five percent will be allocated for a program to treat problem gambling. I want to say this. That this email that's been sent around about the "Gambino" family coming to New Hampshire. Well, it is Lou D'Allesandro who sponsored the legislation, and I don't know anything about the Gambino family, and this nonsense that is becoming pervasive on the Internet. I find that offensive to every Italian American who lives in this community. That is offensive. I take issue with it and the individual who is pushing it across the Internet. If you want to scare people, you can do it in that fashion. We support a horse breeding fund. We support problem gambling. We take dollars to support problem gambling because we realize that there are problems associated with all of these things. Obesity is a problem in the United States. It is a very significant problem. Maybe with Joe Foster reintroducing his bill, we can reduce that. Three percent goes to the county in which the Parimutuel license is located for the purpose of economic development. We need economic development. One percent goes to a greyhound adoption fund. The balance is used to enhance purses. Those of you who like horse racing, who believe that it is the sport of kings, I just read in the *Boston Globe* yesterday, that Suffolk Downs is canceling their Gray II Stakes Program because they can't afford the purses. There won't be a Massachusetts handicap this year. The other Gray II races have been eliminated. I would like to see those races restored to Rockingham Park. Forty percent of the income will go to the video lottery machine operators. The machines will be owned or leased by the state of New Hampshire. The state of New Hampshire will have control over this entity as we have control in the state of Delaware. For the three licenses that are available in Coos County, the distribution will be relatively the same, and fifty-two percent of the average net machine income goes to the state, and two percent goes to the municipality, 2.5 percent will go to Coos County to promote economic development, 1.5 percent will go to the Department of Resources and Economic Development, again to promote economic development in the state of New Hampshire, and forty percent will be retained

by the facilities. I don't think there is any question that when this budget cycle is put together that we are going to need money. We have all seen the cuts that are taking place. We know there is no sales tax. We know there's going to be no income tax. I think we would be absolutely crazy if we attack the business community again. They have done their fair share. This is a presentation of an economic recovery plan that brings money to the general fund in the area of \$200- \$300 million. Now the question of sustainability was brought up. Is this a sustainable source of revenue? Absolutely. It is sustained in Delaware for ten years. When doing our calculations, we took into consideration that there may be another state in close proximity to us that puts the machines in - the state of Massachusetts. We have taken that into consideration. A track will open in Maine, in Bangor. I don't think they are a great threat to us. But we have taken into consideration the flow of cash and the fact that we have a sustainable situation. The question of morality is one that we deal with consistently. Each and every one of you makes up your own decision with regard to that. This state has had a tradition of working in conjunction with the gaming industry. We have done it for years. It's made good sense to us in the past. I would hope that it would make good sense to us moving forward. In doing all of the research that I have, and I have spent a great deal of time and effort on this, it appears to me that one of the things we're looking for is revenue. We're looking for revenue. We're looking for jobs. We're looking for an opportunity to balance a very precarious budget. This is that opportunity. Others may have other opportunities. I want to hear them. I want them brought forth. I want them to be discussed, just as we are discussing this. This bill passed this Senate seven years ago. This bill was not accepted by the House of Representatives seven years ago. Had this bill been put in place, the state of New Hampshire would have received, by our calculations, about \$1.3 billion in revenue. About \$1.3 billion, which means we would be looking at a fairly substantial surplus this year, rather than a deficit. Now I don't think that anyone's mind has been changed in this arena. But I do think you know the ingredients of the legislation. I have tried to provide everyone with an opportunity to see this. I have visited every newspaper in the state and gone over in detail, every item. The only newspaper that failed to meet with me was the *Telegraph* in Nashua. They didn't have time. Okay. I accept that. But I have been to Keene; I have been to the *Lawrence Eagle Tribune*; I have been to the *Concord Monitor*. I had a telephone interview with the *Manchester Union Leader*, even though they said they were against the bill. Having not read it, they were against it, and they editorialized against it, but they gave me the courtesy of a telephone interview. I met with the *Portsmouth Herald*, and I have met with *Foster's Daily Democrat*. So I have tried to get it out to everyone. Any question that was asked, I tried to address. I will try to address it with anybody in this audience. I believe that when push comes to shove in this budget cycle, we are going to have to find \$200 million. If the education bill that was passed in the House comes over to the Senate, we are going to have to find another \$150 million or make an adjustment. You put those together and, as Everett Dirksen said, "we are talking real money." Mr. President, that's why this bill came out to pass. That's my story and I'm sticking to it. Thank you.

SENATOR BARNES: Thank you, Mr. President. I have two or three questions for the Senator, if he will you take them

SENATOR D'ALLESANDRO: Absolutely, Senator Barnes.

SENATOR BARNES: Have you read your telephone interview in the *Union Leader* today?

SENATOR D'ALLESANDRO: I read my telephone interview. It's on the editorial page.

SENATOR BARNES: Well, this is under John DiStaso Granite Status.

SENATOR D'ALLESANDRO: Look at the editorial page. That is where my television interview is.

SENATOR BARNES: A very good photograph of you.

SENATOR D'ALLESANDRO: I thought it was terrible. Really. Well, my wife said it was awful. I have to take her judgment because I value that.

SENATOR BARNES: I was trying to make you look good, for gosh sakes.

SENATOR D'ALLESANDRO: Jack, that is impossible.

SENATOR BARNES: Senator, my first question.

SENATOR D'ALLESANDRO: Yes.

SENATOR BARNES: It says in here that there are three grand hotels and I heard you talk about Coos County. I thought we had four grand hotels. Is there some reason you haven't included the one over in Greenland, not Greenland, over in Rye or over that way on the coast?

SENATOR D'ALLESANDRO: I don't think that New Castle's in Coos County.

SENATOR BARNES: No, but I am saying, you said three grand hotels. We have four grand hotels. Is there some reason that wasn't included?

SENATOR D'ALLESANDRO: We wanted economic...our plan was to promote economic development where it was needed, in Coos County, where there has been a decrease in population, elimination of jobs, and some very significant problems. So that is what we tried to address as an economic development package.

SENATOR BARNES: Thank you. That is a good answer.

SENATOR D'ALLESANDRO: Thank you.

SENATOR BARNES: I want to talk about the Gambino family.

SENATOR D'ALLESANDRO: Yes.

SENATOR BARNES: No offense to the Italians in the state of New Hampshire or in the Senate Chamber. I have more of a problem with the Giambi Family and you know what I am talking about Senator. The guy that plays first base for the Yankees in the Giambi family? The Gambino Family, would you believe, was in the paper about two months ago when the race track up there in Belmont got into a little bit of a problem? They are being investigated. I believe it was the Attorney General's office, not an email sent out by some radicals that are working against this piece of legislation. It mentioned the Gambino Family was perhaps involved. I think that is where originally the Gambino Family came into play. Am I correct on that?

SENATOR D'ALLESANDRO: You might be, but the Attorney General didn't send out any emails.

SENATOR BARNES: No. I am sure...that was in the newspaper. The Gambino Family was mentioned by the Attorney General a couple of months ago.

SENATOR D'ALLESANDRO: To answer your question, and thank you for it. I think the Gambino Family is mentioned every time there is a problem. You know. It makes good copy. It makes good conversation. I think they should have said "Where's Whitey Bulger?"

SENATOR BARNES: They are still working on that.

SENATOR D'ALLESANDRO: Right. They're still looking for him.

SENATOR BARNES: Thank you, Senator.

SENATOR D'ALLESANDRO: You're welcome.

SENATOR GATSAS: Thank you, Mr. President. I certainly commend my colleague from Manchester for his hard work on this subject matter. There is no question that...it is not a secret what my position is on this. It is no secret what my position is in who should control and run the machines. The state of New Hampshire should own and control the machines. Without the state of New Hampshire, the race tracks can't have the machines. And the Senator is right, New York gets 70 percent going to the state. There is only one track, but the last article that I read that came from New York is that Aqueduct just approved it and took the same deal. So if 70 percent is good enough for the state of New York, I would think that more than 52 percent...and the 70 percent that goes to the state of New York doesn't include renting or leasing of the machines. Seventy percent is net to the state. So is there better legislation? Correct. And certainly a lot of the pieces that Senator D'Allesandro used in his legislation comes from that twenty-three page critique that then Attorney General, Phil McLaughlin used on my piece of legislation, better known as 198. Twenty-three pages. It is probably the only piece of legislation that I have seen in my short time up here, that had a twenty-three page critique from the Attorney General's Office. Every remark that the Attorney General made, I put in that bill. I made every change he requested. I sent him back a letter thanking him for helping me create the best piece of gaming legislation in the state of New Hampshire. So a lot of that Senator D'Allesandro has used in his legislation, so I don't have a problem with that because I think it is getting closer to where we should be. I don't think we, as a state, should anoint anybody with those kinds of proceeds. I think the licensing situation should be open. I am the first one to say that if the tracks applied, certainly they have the venues that should be responsibly be able to accommodate those situations. But again, it is about the state of New Hampshire, and it is about what we get here. If it is good enough at 70 percent for the state of New York, it should be good enough for the state of New Hampshire. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you, Mr. President. I spent eight years in the House and during those eight years we have had a number of gambling bills come across, and my good friend from Manchester, I probably was one of the guys that voted against that particular piece of legislation last time it hit the House. But you mentioned the fact that it is going to bring in all this money, \$300 million I think you said. Where is that money right now? I got a letter from a constituent here that probably explains where some of that money may be right now. "First, I'll state, my business and I have worked very hard over the years to grow the brand and image of the product we call New Hampshire. This state continually comes up in national ratings as the safest, healthiest and most livable state in the country. Why would we want to mess with this? Second, my business relies on discretionary income being spent on the goods and services that we provide. This bill states that the video lot-

tery slots would bring over” and he quotes a much larger figure of “\$650 million in gross revenue.” And he poses the question, “Where is that money now? I don’t think that it’s in the bank waiting for gambling. Passing legislation that would allow casino style gambling at selected locations in New Hampshire will reduce discretionary spending at my business and limit my ability to invest and grow. Based upon the track record in other states, these types of casinos draw between 50 and 80 miles and become the destination spots that lure dollars away from existing restaurants, hotels, attractions and retail operations across the state.” I’m not going to continue with the letter, but the point that this gentleman is making is that he is a businessman in this state and I agree with him. There is only so much discretionary spending that can go around. There is only so much money in our pocket that we don’t pay for taxes, mortgages, car payments, electric light bills, telephones, whatever. Whatever you got left is discretionary, and there is only so much of it. This type of gambling bill will take that away from the businesses that exist now. This gentleman owns several restaurants in the area. It is called T-Bones, the Great American Eatery. He is one of the finer business partners in our area. Thank you very much.

SENATOR MARTEL: Thank you very much, Mr. President. I think it is time to have a little comical esplanade here after this heavy day. “They’re in the gate. The flag is up. They’re off. Racing for the lead is Gander. Gander’s on the outside and here comes Early Morning and Sweet Simone on the inside.” And it goes on and on and on and all of sudden, who’s the winning horse, the one that the jockey fell off of, and that is the way it goes in gambling, but I enjoyed doing that. But the other thing too is, “Here comes Yankee.” This is all an industry, Mr. President, that needs our support, needs our help. I have been a strong proponent of gambling since I have been a little boy running numbers for my grandmother, who I admit it right here. This is nothing new. I have said this before on the Senate floor. I was only four years old then and I was pure at heart. She was, too. So I come from a family that does support gambling and always has supported gambling through all of its elements from bingo all the way up to numbers and all the way up to the races and now I believe it is time for us to bring machines into the state of New Hampshire and allow us to have them at the strategic locations which will bring us revenues, okay, back into the state that we badly need. I hope that we see the light through the tunnel here in both houses of this legislature and allow us to go forward to the Governor to have him sign this into law. The issue here, and many people have the concern and it is a valid concern, is that it may bring elements of crime to the state of New Hampshire. If we really look at our consciences and really look seriously at what is going on in the state of New Hampshire, we already know that those elements already exist here in the state of New Hampshire, and it is a growing element of our society. Sadly to say, I, personally, have gone to locations where I have walked safely outside at three, four o’clock in the morning without having fear of anyone attacking me or my wife. It was a very safe element. The issue is that it is well protected because of security that the tracks would have and in other cases, the casinos, and also, working in tandem with the police departments. My father was a policeman. He was a police captain. Of course he didn’t know about my grandmother. Nobody squealed. But my father always was one who knew how to fight the law and how to apply it in the right way. So I urge my fellow citizens to please look at this very well. I know that many people will in fact...well I don’t think that anybody is going to change

their minds on this. I hope you do. I urge you to pass this bill, and ought to pass motion, 3-1 by the committee, and I ask you to vote that way this afternoon. Thank you very much, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I am not going to sing or dance or anything, but I would like to thank the Ways and Means Committee on their hearing report because it says, "who supports the bill?" and then there is a long list, and in the middle of it is Jim Rubens. So I think that is fantastic that you accomplished that. When I went before your committee, I spoke about the honorable people in my district that I support, that own the track. And Leach O'Carney's daughter Cathy Brothers is here today, and Dot Carney's up behind there. These are honorable people. Now the passion that Senator D'Allesandro has for the north, for the west, for the east, and the south, none of it is in Manchester, but yet we'll talk about discretionary spending. Tonight I am willing to bet a good portion of this state is going to be in Manchester. They're going to be at the Verizon Center or they are going to be playing ball. It is entertainment. That is all that I ask for back in Salem, is to put entertainment back in Salem. I mean, you can hear many stories if you want to go talk to these people and talk to the owners back in the '60s. Their families are still around. Go talk. The fact is, people got rich off of selling moth balls to keep the pigeons out up in the balconies there. I mean, that was just a thing that happened in my community that the track supported. Stupid thing, but I will never forget it. The fact is, that track was a huge part of my community. You know, Senator D'Allesandro says to me today, "You have to support this. There is 400 jobs in your community." Last year when we talked, I believe we talked about 600 jobs in my community. We are down to 400. What are we going to do to Canobie? Because they are at 1,000, so I don't know what is going to happen next. But the fact is, they are an honorable business in my community that's asking for help. No different than any other part of the state. I think today I heard something of an olive branch. There is room for discussion. There is room for talking about the bill that might work. I have not yet, being in Finance, said that I am willing to look at anything but the expenses at this point. But the fact is, two months from now, you may be talking about that in Ways and Means. I think if that olive branch is truly out there, because I did learn a lot this summer. I went and saw an amazing thing. I saw real horse racing that I saw when I was a kid. Tough to remember when you are six years old or seven years old, going to the track at 6:30 in the morning, and then watching the races, and then your mom used to work there, who worked for the food service at one point. To go over there and see those people that I saw this summer with the bonnets and the dresses, and the people carrying the coolers and coming in with their lawn chairs, that is what used to be at Rock, folks. We used to have it. We used to have that passion in Salem and that is what we are asking to try and get back. Now I know there is debate over whether we have done enough for the horsemen to make this happen. I know there is a debate about whether or not the state gets its fair share. This is the first time I have heard that debate on this floor. And that bill seven years ago, the only part that I got to participate in, because I was in the House at that time, was the pastor of my church met with Senator Klemm and tried to do something about helping people that already had gambling problems. They are already in the back of the track. There is no money in the state to do that. We haven't had anything. That was the only fair thing that I got to discuss about that

because that vote in the House didn't even come close to a fair vote. We never had the discussion. I would hope that at some point in this session we get to have a fair discussion on this bill. I thank you.

The question is on the motion of ought to pass.

A roll call was requested by Senator D'Allesandro.

Seconded by Senator Roberge.

The following Senators voted Yes: Gallus, Eaton, Clegg, Martel, D'Allesandro, Morse.

The following Senators voted No: Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Letourneau, Estabrook, Hassan, Fuller Clark.

Yeas: 6 - Nays: 18

Motion failed.

Senator Morse re-refer to committee.

SENATOR BARNES: I would like to speak on that motion, if I may. Thank you, Mr. President. There will be a roll call. I am going to ask for a roll call. I hope it gets seconded. The reason that I rise on this, I have a real problem wondering why we would want to re-refer this at the present time. There is a piece of legislation over in the House that we could use as a vehicle later on. With the bad cloud that is hanging over the race track up the road there in Belmont, I cannot vote for gambling in this state until that is cleared up. Right now the Attorney General's investigating it, the Racing Commission is meeting on this sometime in May. They originally were going to do it in March, but for some reason it's been put off. Several states in the country have cut off the simulcast to that race track. They must have a reason for doing that. I'm sure they are not getting the emails that Senator D'Allesandro was concerned about. I just don't see how we, in all good consciousness, can vote to re-refer this bill with the dark cloud that is hanging over that race track. I am not a prude. I have not always been against gambling. As a matter of fact, last year I voted for Senator Gatsas' bill. Senator Gatsas asked me the other day if I would vote for his bill this time if he were to bring it forward. My answer to him, "Ted, no. Not as long as that dark cloud is over there. I am not voting for it." I don't see how anyone in this room can vote for it until that thing is taken care of. There is a bill in the House that could keep this thing alive later in the session if it need be. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I speak in support of the re-refer motion. There are dark clouds hanging over everything. There has been a dark cloud over the Portsmouth Naval Shipyard for 100 years. There has been a dark cloud over here and a dark cloud over there. Let's not react to dark clouds. Let's react to something that is viable and something that has merit. This deserves consideration. We are going to need money. We are going to need money to take care of the people of the state of New Hampshire. There is a dark cloud hanging over the people of the state of New Hampshire. When you cut \$100 million out of Health and Human Services, that's a dark cloud. I agree with you. I want to clear up that dark cloud. I want to produce sunny skies. The only way to do that is have something in place that we can refer to. We have to have something. It seems to me, this is a vehicle that can do it. If you're opposed to it, vote against it, that's all. Everyone should vote their conscience. Thank you, Mr. President.

SENATOR BARNES: Thank you. Senator D'Allesandro, I have known you for a number of years and I know you want to do things on the up and up. How in the world can we be voting on something, re-referring something that is allowing a track that's under investigation, to participate in this? How can that possibly be? How can you do that? I don't understand it.

SENATOR D'ALLESANDRO: The answer to that question is they can't participate in it. They have to apply for a license. They have to be investigated by the Attorney General. If the Attorney General's investigation does something with that license, they are out of business. That's why we have the Pari-Mutuel Commission. That's why we have an Attorney General. If we don't have any confidence in them, let's cut those departments. We can save a lot of money. Huh? We'll get some dough back into that budget. Let's get rid of the Pari-Mutuel Commission if we don't trust them to investigate. Let's get rid of the AG's Office if we don't trust their investigation. That's what they are there for. It's not the first time they've investigated things, nor going to be the last time they investigate things. We have to have confidence in how this government works.

SENATOR MARTEL: Thank you very much, Mr. President. I will be very short. I just...I can understand the frustration that some people have in the investigation that is going on. That investigation is only going on in one location. People that don't even own the track are the ones who are being investigated. It was something that was being done, evidently, without any knowledge, as far as we know, with the investigation that is taking place right now. The issue is that we can't brand everybody who is in the racing industry or the gambling industry in our state as all being the same. This is something that very much affected us here in the state. Senator D'Allesandro is absolutely correct when he says that the Attorney General and the Parimutuel Agency is watching over this and taking care of it. And they are very, very well renown people. I trust that their decision is correct, whenever they come to it. If we find out there is some corruption, let's clean it up and get it out of here so we can have a clean bill of health for racing here in the state of New Hampshire, and also for gambling in the state so we can bring machines in. I will be the first one to stand up and say, "Get them out of here." Thank you very much, Mr. President.

SENATOR BOYCE: Yes, I rise in opposition to the re-refer motion and I would like to have my colleagues vote down the re-refer motion so we could eventually get to an indefinitely postponed motion. Now some of you may not have ever heard of an indefinite postponement. But that is the motion that says that, until the end of this biennial session of the legislature, we will not accept back the same topic. I know this has been done in the House a few times when this bill came up, and it just means that we don't have to ever hear about this again until after we have all been re-elected. I think I would like to do that. Thank you.

SENATOR MORSE: Thank you, Mr. President. I think we have all extended courtesies to each one in this body time after time. I know we have done it just recently. All we are asking at this point in time is to re-refer. I, first and foremost, want to state that I truly believe that those people in my district who have been huge supporters of an organization that I support are very honorable people and they support that we have clean, gaming operations in the state of New Hampshire. Thank you.

The question is on the motion of re-refer.

A roll call was requested by Senator Gatsas.

Seconded by Senator Morse.

The following Senators voted Yes: Gallus, Burling, Green, Flanders, Eaton, Gottesman, Foster, Clegg, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Morse, Hassan.

The following Senators voted No: Johnson, Kenney, Boyce, Odell, Roberge, Bragdon, Barnes, Letourneau, Fuller Clark.

Yeas: 15 - Nays: 9

Adopted.

SB 225 is re-referred to the Ways and Means Committee.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

SB 38-FN, relative to school building aid for certain receiving districts.

SB 43, relative to the administration of estates of persons presumed dead.

SB 79, relative to the governance of the regional community-technical colleges.

SB 88, relative to emergency medical transportation.

SB 101-FN, relative to developmentally disabled services for persons under 21 years of age.

SB 125-FN, repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

SB 145-FN, establishing a medical/vision advisory board.

SB 146-FN-A-L, establishing a civil legal services fund consisting of court filing fee surcharges for the purpose of establishing and operating a New Hampshire Legal Assistance office in Nashua and to provide for additional staff in other New Hampshire Legal Assistance offices.

SB 147-FN-L, relative to eligibility for local assistance.

SB 169, relative to access to confidential court records.

SB 170, revising the nurse practice act.

SB 171, establishing a committee to study HIV/AIDS service delivery.

SB 186, allowing probate court judges and district court justices to sit on probate or district court cases.

SB 196-FN, requiring a hearing when medical malpractice insurance rates change.

SB 214, relative to screening panels for medical injury claims.

ANNOUNCEMENTS

SENATOR EATON (Rule #44): I would just like to take a moment and, on behalf of my colleagues in the Senate and our great staff that we have here, tell Senator Hassan and your whole family that we will be thinking of you on Monday. Our prayers and wishes are with you.

SENATOR HASSAN: Thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Every once in a while I like to make a positive statement to my colleagues on some great work that they did. Let me tell you this that, I know we had a battle of the birth records bill last term, but I follow the birth records every month. I want to tell you that, as of this month, 594 New Hampshire people have sought their birth records. Twenty-two have received updated medical histories. Only 11 people have said no to the parental preference form. I think that is a wonderful tribute to the Senate, to the House and I appreciate your support on that, Mr. President, 'cause we couldn't have done it without it. I have had calls from Colorado, from Rhode Island, from Maine, inquiring about this bill. We have made 594 people feel good about themselves. That is a wonderful accomplishment. Thank you.

SENATOR BARNES: Thank you. While we are on Senator Hassan's father, I would like to make a comment that Senator Hassan's father, I am sorry that I never got to know him, but he was a true American hero. For those of you who don't know and probably Maggie hasn't been spreading the word around, her 81 year old father was one of the over 600,000 American soldiers that fought in the largest battle which went on for five weeks of WWII. It was called the Battle of the Bulge. Her father was one of those American heroes that survived the Battle of the Bulge. I was very touched by that and I wish I had met the man.

SENATOR LARSEN: Just quickly to also recognize the public service of Maggie's father, who not only was an early...former secretary of HUD, the former president of UMass and former superintendent of Boston public schools. To recognize him as a public servant, but also to recognize the public service that each of you do, and to recognize Maggie who, through a difficult week, has worked very hard. Each of us in our way at times works through something that is very difficult in our private lives, but we keep the public service going. I think Maggie deserves our recognition today and certainly the public service that all of us give is reflected in Maggie's hard work this week. Thank you.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 66, regulating mandatory overtime for nurses and assistants.

HB 90, relative to private driving instruction and exhibition facilities.

HB 270, relative to procedures of the legislative ethics committee.

HB 350, relative to enforcement of the labor protection statutes, permitting certain wage deductions, and increasing the civil penalty in the department of labor.

HB 371, relative to mercury reduction.

HB 392-FN, increasing the mileage reimbursement rate for members of the legislature.

HB 513, relative to on-board diagnostic system inspections.

HB 665-FN-L, relative to the applicable minimum wage for hourly employees.

HB 710-FN, relative to the 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury.

HB 720-FN, relative to special number plates.

HCR 6, a resolution urging Congress to enact legislation to make English the official language of the United States.

HCR 10, a resolution recognizing February 8, 2005 as Scouting in New Hampshire day.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 66 – HCR 10, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

First and Second Reading and Referral

HB 66, regulating mandatory overtime for nurses and assistants. (Internal Affairs)

HB 90, relative to private driving instruction and exhibition facilities. (Transportation and Interstate Cooperation)

HB 270, relative to procedures of the legislative ethics committee. (Internal Affairs)

HB 350, relative to enforcement of the labor protection statutes, permitting certain wage deductions, and increasing the civil penalty in the department of labor. (Banks and Insurance)

HB 371, relative to mercury reduction. (Energy and Economic Development)

HB 392-FN, increasing the mileage reimbursement rate for members of the legislature. (Transportation and Interstate Cooperation)

HB 513, relative to on-board diagnostic system inspections. (Transportation and Interstate Cooperation)

HB 665-FN-L, relative to the applicable minimum wage for hourly employees. (Banks and Insurance)

HB 710-FN, relative to the 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury. (Ways and Means)

HB 720-FN, relative to special number plates. (Transportation and Interstate Cooperation)

HCR 6, a resolution urging Congress to enact legislation to make English the official language of the United States. (Education)

HCR 10, a resolution recognizing February 8, 2005 as Scouting in New Hampshire day. (Public and Municipal Affairs)

Adopted.

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

April 14, 2005

The Senate met at 1:00 p.m.

A quorum was present.

The Reverend Karen Maleri, Director of Pastoral and Spiritual Care at Havenwood-Heritage Heights here in Concord, guest chaplain to the Senate, offered the prayer.

Good afternoon. It is a pleasure to be with all of you. Today I offer this invocation to all gathered in this place. From an interfaith perspective, I am concerned when invoking the name of God. One needs to speak to the god of each person's heart, not simply one God connected with one religion. To that end, I share this with all of you.

O, precious God of many names and faces, as we look at what is laid on the table before us this day, let us be ever mindful of community wellness amidst our own agendas and preordained notion of success; As we warrant and govern the magnificent beauty found in the New Hampshire environment, pray us toward guidance and that righteous sense of WE, not I; And as we thoughtfully, and with great care, empty what is laid upon our table this day – let choice, effectiveness, and achievement prevail as our Senate commandments to follow – as we live and serve the greater good in our fair state of New Hampshire. Shalom. Amen. And blessed be.

Senator Clegg led the Pledge of Allegiance.

Senators Flanders and Martel are excused for the day.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

HB 181, establishing a committee to study the special account in the New Hampshire retirement system. Banks and Insurance Committee. Ought to Pass, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 181 ought to pass. The special account is running low and could have an adverse affect on member benefits. There have been many questions and concerns surrounding the special account and this study would be able to focus on those issues. This is an important issue and the committee hopes that you will support ought to pass.

Adopted.

Ordered to third reading.

HB 512, establishing a commission to study property tax relief and reverse mortgages. Banks and Insurance Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Banks and Insurance

April 5, 2005

2005-1022s

06/05

Amendment to HB 512

Amend the title of the bill by replacing it with the following:

AN ACT expanding the study committee on property tax relief to include reverse mortgages.

Amend the bill by replacing all after the enacting clause with the following:

1 Study Committee Title Changed. Amend 2004, 88:1 to read as follows:

88:1 Committee Established. There is established a committee to study property tax relief, ~~[without implementing any new broad-based tax]~~ **including reverse mortgages.**

2 Study Committee Duties. 2004, 88:3 is repealed and reenacted to read as follows:

88:3 Duties. The committee shall study any and all existing and proposed state and local property tax relief proposals including, but not limited to, abatements, credits, exemptions, reimbursements, and reverse mortgages. The committee may seek testimony from people with experience in one or more of the following categories: mortgage banking, credit lending, home equity financing, deferred payment lending, debt resolution consulting, bankruptcy law, bond banking, and the sale and placement of state and local bond issues.

3 Effective Date. This act shall take effect upon its passage.

2005-1022s

AMENDED ANALYSIS

This bill amends the duties of the property tax study committee established by 2004, 88 to include reverse mortgages.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 512 ought to pass with amendment. The bill amends the duties of the property tax study committee of 2004 to include reverse mortgages. The idea of reverse mortgages would be a great option for New Hampshire citizens to assist them in paying their property taxes. The amendment would change it from a commission to a committee. Please join the Banks and Insurance Committee by supporting the motion of ought to pass with amendment. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 150, defining truancy. Education Committee. Ought to Pass, Vote 3-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 150 ought to pass. This bill was brought on request of the Department of Educa-

tion as a component of the "No Child Left Behind." It helps to define truancy and habitual truancy for data reporting purposes. It outlines truancy as missing half a day of classes and habitual truancy as missing twenty half days. However, local districts remain in control of determining what their half day is. The Education Committee unanimously approved this bill and asks for your vote of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education. Education Committee. Ought to Pass, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 308 ought to pass. This bill was brought on request of the New Hampshire Department of Education to address how special education payments are made to school districts. The current law does not reflect the practice of payments. Currently DOE seeks to pay any bills that come in within 60 days of receipt of invoice, while this states the bills just need to be paid by January 1 of that year. The bill also further clarifies alternative dispute resolution by ensuring the process remains confidential. The Education Committee unanimously approved this bill and asks for your vote of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 107, relative to the use of artificial light to view moose in Coos County. Environment and Wildlife Committee. Ought to Pass, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 107 ought to pass. House Bill 107 extends the hours of viewing moose with artificial light in Coos County from 9:00 to 11:00 p.m. Moose watching is an important tourist attraction in the North Country. Moose generally do not come out until 8:00 or 9:00 at night, so current viewing hours stop just as tours begin to see the animals. The extended viewing hours will not have any harmful effect on moose. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

SENATOR EATON (In the Chair): Is that with or without a weapon in the car?

SENATOR BOYCE: I'm just curious. You say that this won't have any effect on the moose. I am wondering if the moose will just start coming out at 11:00 instead of 9:00?

SENATOR JOHNSON: That's a possibility. I had a concern about Senator Gallus staying up that late.

Adopted.

Ordered to third reading.

HB 229, extending the committee to study the establishment of a farm viability program. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

Environment and Wildlife**April 6, 2005****2005-1030s****08/09****Amendment to HB 229**

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the establishment of a farm viability program.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the establishment of a farm viability program.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the senate, appointed by the president of the senate.

(b) Five members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study ways to maintain the viability of farm businesses within the state through the utilization of term easements and including grants, tax incentives, loans, business planning and other technical assistance, or any other programs that may be useful.

4 Chairperson. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2006.

6 Effective Date. This act shall take effect upon its passage.

2005-1030s**AMENDED ANALYSIS**

This bill establishes a committee to study the establishment of a farm viability program.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 229 ought to pass with amendment. House Bill 229 re-establishes the Farm Viability Study Committee. The bill that came from the House sought to simply change the reporting date for the study committee. However, during the hearing we discovered that we need to amend the bill to actually re-establish the Farm Viability Committee since their final report has already been handed in. This study committee did a great deal of important work last year. However, the members feel that there is still a great deal of work to be done. Farming, agriculture and horticulture are vital industries to our state and it is important that we make a commitment to these issues in the legislature. The Environment and Wildlife Committee unanimously asks your support for the motion of ought to pass with amendment. And, with that, I thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 353, relative to consent to haul lobster and crab gear of license holders. Environment and Wildlife Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

Environment and Wildlife

April 6, 2005

2005-1031s

10/04

Amendment to HB 353

Amend RSA 211:18, I-a as inserted by section 1 of the bill by replacing it with the following:

I-a. Any person who purchases a license to take lobster and crabs in waters of the state of New Hampshire pursuant to this section shall be deemed to have given consent to law enforcement officers to haul, for any purpose, their lobster and crab gear set for the purpose of taking or keeping lobsters and crabs within the jurisdiction of the state of New Hampshire.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 353 ought to pass with amendment. House Bill 353 increases Fish and Game's authority to legally haul and examine lobster gear. The Department currently has authority for random inspection and hauling. However, if they want to search specific gear in response to information about illegal activity, they need a search warrant. This bill, with the amendment, will allow officers to haul lobster gear while investigating criminal activity. It creates an implied consent to hauling for anyone who purchases a license. The committee heard from the New Hampshire Commercial Fishermen's Association that they support this legislation. Once again, the Environment and Wildlife Committee asks your support unanimously to pass this piece of legislation as amended. Thank you very much.

SENATOR LARSEN: Just a question on the notification of implied consent. When you file for a license, will there be a notification that in signing your name to the license request, that you're giving implied consent?

SENATOR BARNES: I am not sure. Maybe the chairman of our committee can answer that question. Senator Johnson, do you yield to that question?

SENATOR JOHNSON: Yes. What was the question again?

SENATOR LARSEN: The question was, when someone fills out an application for a license for lobster and crab hauling, will they be informed that they are, in signing for a license, be giving implied consent?

SENATOR JOHNSON: Fish and Game said that that would appear on the license.

SENATOR LARSEN: Thank you.

SENATOR JOHNSON: You're welcome.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 445, relative to the taking of certain game birds and fur-bearing animals. Environment and Wildlife Committee. Ought to Pass, Vote 2-1. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 445 ought to pass. House Bill 445 allows the Fish and Game Department to set an open season for European Partridge, also known as Hungarian Partridge. It also includes coyote and opossum in the definition of fur-bearing animals. This will allow the Department to regulate the trapping season on these animals if they feel it is necessary. The bill was submitted at the request of the Department in order to clarify their regulating authority on these species. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 303-FN, relative to the fire standards and training commission. Executive Departments and Administration Committee. Ought to Pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 303 ought to pass. This was a request from the Department of Safety. This bill actually does four things. First, it clarifies the name of the Fire Standards and Training Commission and names of various organizations that serve on the commission. Second, it clarifies the authority of the Fire Standards and Training Commission to establish educational and training standards for fire service personnel, not just firefighters. Third, it permits the commission to waive certain requirements for fire service personnel who are not first responders. Lastly, it deletes a statutory section relative to commission's discretion to reimbursement fees. I also would have a slight floor amendment that is a housekeeping measure, Mr. President. At this point, I would ask you to join the ED and A Committee on a motion of ought to pass.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

April 12, 2005

2005-1107s

05/01

Floor Amendment to HB 303-FN

Amend RSA 21-P:26, I(h) as inserted by section 2 of the bill by replacing it with the following:

[~~(+)~~] **(h) *One representative of* the New Hampshire *State* Permanent Firemen's Association[~~;~~ and].**

SENATOR KENNEY: Thank you, Mr. President. Members of the body, on page two, line 17. There is one of the members of the New Hampshire State Permanent Fire Association made note that the word "state" was left out of their association name and they ask that that be put back into the association name. That would prevent any confusion with any other firemen's association in the state. So, I'd ask that we go ahead and pass floor amendment 1107.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 434-FN, requiring state agencies using automated answering systems to provide a method of access to a human being. Executive Departments and Administration Committee. Inexpedient to Legislate, Vote 5-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Mr. President. I move House Bill 434 inexpedient to legislate. This legislation was written with good intentions and reflects the frustration of many citizens trying to get through to a state agency. While the committee recognizes that a real person on the phone should be a part of best practices in all of our agencies' offices to the maximum degree possible, the same is not always technically feasible and could prove costly and need not be achieved through legislation. Please support the ED and A Committee's motion of inexpedient to legislate.

SENATOR LETOURNEAU: Senator Fuller Clark, am I correct in assuming that you can ask the Governor to do an executive order on this?

SENATOR FULLER CLARK: Senator Letourneau, I believe that we can ask, as a body that of the Governor or of the state agencies themselves and that was discussed in our committee.

SENATOR LETOURNEAU: Thank you very much.

SENATOR FULLER CLARK: Thank you.

Committee report of inexpedient to legislate is adopted.

SENATOR D'ALLESANDRO: Mr. President, this bill was sponsored by the eminent majority leader.

SENATOR EATON (In the Chair): You win some, you lose some.

SENATOR D'ALLESANDRO: Thank you, Mr. President.

SENATOR EATON (In the Chair): Thanks for bringing that to our attention. We'll remember when your time comes.

SENATOR D'ALLESANDRO: It has come and gone.

SENATOR EATON (In the Chair): I saw you riding Gander in the paper yesterday.

HB 95, relative to delegates to state party conventions. Internal Affairs Committee. Ought to Pass, Vote 6-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 95 ought to pass. House Bill 95 actually only applies to one of the two parties that have primaries in the state. One party chooses not to participate in this way and that is fine. It only applies to someone who is elected to be a candidate to office on the party's ticket, and also gets themselves elected as delegate to the party. It simply allows the party to have a full slate of delegates rather than having two people filling one slot. It is just a fairness issue to allow people that want to be delegates to go to their convention. I ask the Senate to join me in voting yes.

SENATOR FULLER CLARK: Senator Boyce, are you aware that, or would you believe that the Democratic Party deals with the same issue through their constitution and provides for the same provisions?

SENATOR BOYCE: I know that the Democratic Party does it their own way, so this is just to make the statute comply with what you do already.

SENATOR GREEN: Senator Boyce, I am trying to read this and try to figure out what we are doing here. If I am an elected candidate for office, does that say that I cannot run as a delegate as well?

SENATOR BOYCE: What it says is that, because you are elected as a candidate in the primary, you already automatically are a delegate to the convention. If your name appeared on the ballot also as a delegate to the convention, or you were written in a sufficient number of times, then what happens now is that the party gets one delegate for two slots. This would allow the person getting the next highest votes behind you to take your place as delegate. You are still there as the candidate.

SENATOR GREEN: If I'm a candidate in the primary and I lose, but I am also on the ballot as a delegate and I win, what happens in that case?

SENATOR BOYCE: You're the delegate.

SENATOR GREEN: I'm the delegate?

SENATOR BOYCE: Yes. And this was actually...

SENATOR GREEN: Well, what I am trying to say is it says to me that I can't file in both places.

SENATOR BOYCE: No. It doesn't say you can't file in both places.

SENATOR GREEN: Okay.

SENATOR BOYCE: It just says you can't "win" both places.

SENATOR GREEN: You can't win both places. Okay. Thank you.

SENATOR BOYCE: This was brought forth because Eileen Smigowski who works at the GOP office across the street, put her name in as a delegate for the city of Concord last fall. I think Chris Wood who was...and is a House candidate, won in the primary, but he also won the delegate slot. He bumped her out. And so she was not able to go to the convention as a delegate and he was there filling two spots. So an example of why we...

SENATOR GREEN: Okay. I just wondered why.

SENATOR BOYCE: Okay. Thank you.

SENATOR GREEN: No problem.

Adopted.

Ordered to third reading.

HB 41, relative to the right-to-know oversight commission. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 41 ought to pass. The bill changes the name of the Right-to-Know Study Commission to the Right-to-Know Oversight Commission and extends it until 2010. The commission seeks to have oversight over all right-to-know matters that come before the General Court and to look at the new issues involving email and other electronic means of communicating. This bill allows them...this bill would give them the ability. The Judiciary Committee recommends that the bill be adopted and asks for your support. Thank you.

Adopted.

Ordered to third reading.

HB 223, relative to the procedure for assignment of juvenile probation and parole officers. Judiciary Committee. Ought to Pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 223 ought to pass. The bill provides that juvenile probation and parole officers shall be assigned to judicial districts based on the work formula established by the Department of Health and Human Services. This bill is merely a housekeeping measure to reflect how juvenile probation and parole officers are currently being assigned and is supported by the Judicial Branch. The Judiciary Committee asks for your support at this time. Thank you.

Adopted.

Ordered to third reading.

HB 74, relative to the sale of permissible fireworks. Public and Municipal Affairs Committee. Ought to Pass, Vote 5-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass on House Bill 74. This bill merely fills a tiny glitch in our statutory scheme. At present, permissible fireworks may not be sold by one dealer to another dealer. This statute merely allows that inter-dealer sale of permissible fireworks. The committee asks for your approval.

Adopted.

Ordered to third reading.

HB 84, relative to compensation of county convention members for county business. Public and Municipal Affairs Committee. Inexpedient to Legislate, Vote 4-2. Senator Barnes for the committee.

MOTION TO TABLE

Senator Barnes moved to have HB 84 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 84, relative to compensation of county convention members for county business.

HB 263, relative to the use of design build and construction management methods for state capital projects. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Morse for the committee.

Transportation and Interstate Cooperation

April 5, 2005

2005-1038s

10/04

Amendment to HB 263

Amend the bill by replacing all after section 3 with the following:

4 Major Capital Projects; Design Build and Construction Management. Amend RSA 228:4, V to read as follows:

V. Notwithstanding any other provision of law, the commissioner is authorized to use the design build ~~[method]~~ **and construction management methods** of contracting for any buildings that are part of capital projects. The capital budget overview committee shall approve ~~[all such]~~ **preliminary** plans prior to construction.

5 Effective Date. This act shall take effect upon its passage.

2005-1038s**AMENDED ANALYSIS**

This bill allows the design build and construction management methods for state major capital projects with approval of preliminary plans by the capital budget overview committee. The bill also increases the cost amount for transportation improvement projects eligible for design build.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 540 ought to pass. House Bill 540 does two things. It removes the requirement that property purchased with highway or turnpike funds from the Council of Resources and Development process. It stipulates that the sale of surplus property purchased with highway funds will be sold at fair market value. This bill only concerns residential property. The Transportation Committee asks for your support.

SENATOR HASSAN: Senator Morse, were you referring to HB 540 or to 263?

SENATOR MORSE: I'm one ahead of myself. Does that mean I don't have to stand on the next bill? I will try again, Mr. President. Thank you, Mr. President. I move House Bill 263 ought to pass as amended. House Bill 263 defines the build and construction management methods for major capital projects and establishes procedures for their use. This bill also increases the cost amount for transportation improvement projects eligible for design build. The amendment simply deletes section four of the bill entirely. No one spoke against the bill in committee, and the Transportation and Interstate Committee asks for your support.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 540-FN, relative to the disposal of real property purchased with highway or turnpike funds. Transportation and Interstate Cooperation Committee. Ought to Pass, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 540 ought to pass.

SENATOR FULLER CLARK: Senator Clegg, just in the review of the commentary or the testimony for this bill, it stated, you stated that this bill only concerns residential property. I saw no language in the bill that limited to residential property. Was that simply because we had passed another bill that dealt with industrial? And could you just clarify that please?

SENATOR CLEGG: Yes. We passed a bill, a Senate bill over to the House, which the House is ready to pass that deals strictly with commercial industrial properties and how they'll be disposed of. It will in a different manner that prescribed in this bill.

SENATOR FULLER CLARK: Thank you.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION**Third Reading and Final Passage**

HB 41, relative to the right-to-know oversight commission.

HB 74, relative to the sale of permissible fireworks.

HB 95, relative to delegates to state party conventions.

HB 107, relative to the use of artificial light to view moose in Coos County.

HB 150, defining truancy.

HB 181, establishing a committee to study the special account in the New Hampshire retirement system.

HB 223, relative to the procedure for assignment of juvenile probation and parole officers.

HB 229, extending the committee to study the establishment of a farm viability program.

HB 263, relative to the use of design build and construction management methods for state capital projects.

HB 303-FN, relative to the fire standards and training commission.

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education.

HB 353, relative to consent to haul lobster and crab gear of license holders.

HB 445, relative to the taking of certain game birds and fur-bearing animals.

HB 512, establishing a commission to study property tax relief and reverse mortgages.

HB 540-FN, relative to the disposal of real property purchased with highway or turnpike funds.

ANNOUNCEMENTS

SENATOR HASSAN (Rule #44): Thank you, Mr. President. I just rise to thank members of this chamber for their support and condolences over the last week, and particularly to thank Senator Barnes and Senator Larsen for their kind words about my father last week. He was very proud of his service to his country. He was proud of his other public service as well, and I was proud of him as a father. So thank you all very much.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HCR 11, establishing joint rules for committees of conference for the 2005 and 2006 sessions of the New Hampshire general court.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HCR 11, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HCR 11, establishing joint rules for committees of conference for the 2005 and 2006 sessions of the New Hampshire general court. (Rules and Enrolled Bills Committee)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 25-FN-A, making appropriations for capital improvements.

HB 59-FN-L, relative to municipal responsibility for septage disposal.

HB 78-FN-L, relative to state funding of regional vocational education centers.

HB 210-FN, relative to the determination of absence and return of contributions of members of the retirement system.

HB 216-FN, relative to the authority of the New Hampshire retirement system to purchase supplies and services.

HB 257, relative to emergency medical and trauma service protocols and quality assurance program.

HB 302, relative to the mileage rate for service of documents by county sheriffs.

HB 304-FN-A, relative to federal highway grant anticipation bonds.

HB 313-FN, relative to registration of business entities.

HB 430-FN-A, establishing a one-day resident fishing license.

HB 477-FN, increasing registration fees for pesticides and commercial feeds.

HB 597-FN-A, relative to the natural heritage inventory program.

HB 623-FN, relative to licensing requirements in the insurance and financial services industries.

HB 643-FN, establishing an integrated criminal justice information system.

HB 644-FN, transferring certain responsibilities from the department of transportation and the department of health and human services to the department of administrative services.

HB 651-FN-L, relative to federal lien registration.

HB 687-FN, relative to free tuition at New Hampshire public institutions of higher education for children of veterans who die while on active duty or from a service-connected disability.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 25 – HB 687, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 25-FN-A, making appropriations for capital improvements. (Capital Budget)

HB 59-FN-L, relative to municipal responsibility for septage disposal. (Environment and Wildlife)

HB 78-FN-L, relative to state funding of regional vocational education centers. (Finance)

HB 210-FN, relative to the determination of absence and return of contributions of members of the retirement system. (Banks and Insurance)

HB 216-FN, relative to the authority of the New Hampshire retirement system to purchase supplies and services. (Executive Departments and Administration)

HB 257, relative to emergency medical and trauma service protocols and quality assurance program. (Health and Human Services)

HB 302, relative to the mileage rate for service of documents by county sheriffs. (Transportation and Interstate Cooperation)

HB 304-FN-A, relative to federal highway grant anticipation bonds. (Finance)

HB 313-FN, relative to registration of business entities. (Executive Departments and Administration)

HB 430-FN-A, establishing a one-day resident fishing license. (Environment and Wildlife)

HB 477-FN, increasing registration fees for pesticides and commercial feeds. (Environment and Wildlife)

HB 597-FN-A, relative to the natural heritage inventory program. (Ways and Means)

HB 623-FN, relative to licensing requirements in the insurance and financial services industries. (Banks and Insurance)

HB 643-FN, establishing an integrated criminal justice information system. (Judiciary)

HB 644-FN, transferring certain responsibilities from the department of transportation and the department of health and human services to the department of administrative services. (Finance)

HB 651-FN-L, relative to federal lien registration. (Banks and Insurance)

HB 687-FN, relative to free tuition at New Hampshire public institutions of higher education for children of veterans who die while on active duty or from a service-connected disability. (Finance)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

April 21, 2005

The Senate met at 1:00 p.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! In 490 BC a Greek messenger named Phidippides ran from the city of Marathon to Athens with the news that the Athenian army, outnumbered by 40 to 1 had just defeated the invading Persian army. The distance of the run was 26.2 miles and one legend has it that Phidippides, after delivering his message, dropped dead of exhaustion. Most runners of a marathon race, such as those who ran in Boston this past Monday, have forgotten that story and why a marathon is called a marathon and why it is the distance it is and how dangerous such a run can be. As you run your race here, and I have a feeling your marathon is just about to begin, I wonder what message you are willing to run so hard to deliver that you might risk losing everything in the process. The message Phidippides ran for changed Greek history. Will yours have that kind of effect in New Hampshire?

Give us strength, O God, to run with patience and endurance and focus, the race that is set before us. And remind us, that ours is not the only race going on that matters and that every single runner has a message that needs to be heard.

Amen

Senator Gatsas led the Pledge of Allegiance.

Senator Foster is excused for the day.

INTRODUCTION OF GUESTS**COMMITTEE REPORTS**

HB 99, changing the name of the college for lifelong learning to Granite state college. Capital Budget. Ought to pass, Vote 4-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you Mr. President. I move House Bill 99 ought to pass. The College for Lifelong Learning recently conducted a survey on changing the name of the college to Granite State College. The results showed that the name change was preferred because the current name implies continuing education instead of a baccalaureate degree institution. Ninety-nine percent of the students at the college are from New Hampshire, so the name Granite State College is fitting. Please support the committee recommendation of ought to pass. Thank you Mr. President.

Adopted.

Ordered to third reading.

HB 53, repealing a 1901 law relating to the apportionment of library funds in the town of Haverhill. Education Committee. Ought to pass, Vote 6-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you Mr. President. I move House Bill 53 ought to pass. House Bill 53 updates an arcane 1901 law with regard to library funds in the town of Haverhill. The 1901 law ensured that the Woodsville Library received one-third of the tax dollars collected for the three libraries in the Haverhill library district. Today, there are four libraries in the district and because of this law, Woodsville still receives one-third of the funding earmarked towards libraries. This law handcuffs the boards overseeing the libraries because it creates problems of sending money to where it often needs to go. The Education committee unanimously supported this bill and asks for your support. Thank you.

Adopted.

Ordered to third reading.

HB 97, relative to replacing school budget committee members. Education Committee. Ought to pass with amendment, Vote 4-2. Senator Bragdon for the committee.

Senate Education

April 12, 2005

2005-1105s

08/09

Amendment to HB 97

Amend RSA 671:33 as inserted by section 1 of the bill by replacing it with the following:

671:33 Vacancies. Vacancies among members of cooperative or area school planning committees shall be filled by the moderator for the unexpired term. The school board shall fill vacancies occurring on the school board and in all other district offices for which no other method of filling a vacancy is provided. Appointees of the school board shall serve until the next district election when the voters of the district shall elect a replacement for the unexpired term. In the case of a vacancy of the entire membership of the school board, or if the remaining members are unable, by majority vote, to agree upon an appointment, the selectmen of the town or towns involved shall appoint members by majority vote in convention. Vacancies in the office of moderator shall be filled by vote at a school meeting or election, provided that, until a replacement is chosen, the school district clerk shall serve as moderator. Vacancies occurring on the budget committee of a cooperative school district shall be filled by appointment made within 5 days by the ~~moderator if the vacancy is called to the moderator's attention~~ **budget committee**, or by the chairperson of the cooperative school board ~~if the vacancy is called to the chairperson's attention or~~ if the vacancy is that of a member appointed ~~by~~ **from** the school board.

SENATOR BRAGDON: Thank you Mr. President. I move ought to pass with amendment on House Bill 97. House Bill 97 addresses an ambiguity in current law with respect to who should be filling vacancies on budget committees in cooperative school districts. It is unclear under current law whether the moderator or the school board chair fills vacancies. Under current law, members of budget committees for towns and regular school districts are either appointed by the moderator or elected by the citizens. If there is a vacancy in an appointed budget committee, that vacancy is filled by the moderator. Vacancies in elected budget committees, however, are filled by the budget committee itself. Cooperative school districts are required to have elected budget committees, and as

such, the committee believes they should be treated the same as other elected budget committee members by having vacancies filled by the committee itself. The Education Committee asks your support for OTPA.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 148, transferring the New Hampshire estuaries project from the department of environmental services to the university of New Hampshire. Energy and Economic Development Committee. Ought to pass, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move House Bill 148 ought to pass. This bill transfers the New Hampshire estuaries project from the Department of Environmental Services to the University of New Hampshire. This bill also deletes references to programs that are no longer administered by the office of Energy and Planning. The committee heard testimony that there is no opposition to the passage of this legislation, and has determined that it is in the best interest of all parties involved. The Energy and Economic Development Committee unanimously asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 457, relative to excavating and dredging permit exemptions for water conveyance systems. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you Mr. President. I move ought to pass on House Bill 457. House Bill 457 adds the cleaning of man-made water conveyance systems used for storing or recycling water to the list of activities not requiring a dredge-and-fill permit. The bill has the support of the Department of Environmental Services, the Association of General Contractors, and the New Hampshire Association of Conservation Commissions. The Energy and Economic Development Committee asks your support for the unanimous ought to pass recommendation.

Adopted.

Ordered to third reading.

HB 560, relative to timber harvesting. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you Mr. President. I move ought to pass on House Bill 560. This bill improves compliance with environmental rules by allowing timber harvesters to be issued permits provided they are in compliance with Best Management Practices for Erosion Control. It also allows the division of forests and lands to write cease and desist orders against a timber operation in violation of such procedures, where previously their wardens had to work through the Department of Environmental Services. The Energy and Economic Development Committee asks your support for its unanimous ought to pass recommendation.

Adopted.

Ordered to third reading.

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: TAPE INAUDIBLE at some level of contamination. This bill was supported at the hearing by both the Department of Environmental Services and the New England Petroleum Council. The Environment and Wildlife Committee asks your support of ought to pass.

Adopted.

Ordered to third reading.

HB 199, relative to fish and game department expenditures for marine fisheries. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Hassan for the committee.

Environment and Wildlife

April 13, 2005

2005-1112s

10/03

Amendment to HB 199

Amend the title of the bill by replacing it with the following:

AN ACT relative to fish and game department expenditures for marine fisheries, and relative to the membership and reporting date of the commission to study recommendations of the New Hampshire estuaries project management plan.

Amend the bill by replacing all after section 2 with the following:

3 New Subparagraphs; Commission to Study Implementing a Recommendation of the New Hampshire Estuaries Project Management Plan; Members Added. Amend 2003, 236:2, I by inserting after subparagraph (k) the following new subparagraphs:

(l) The president of the New Hampshire Commercial Fishermen's Association, or designee.

(m) The president of the Coastal Conservation Association of New Hampshire, or designee.

4 Reporting Date Extended. Amend 2003, 236:5 as amended by 2004, 20:11 to read as follows:

236:5 Report. The commission shall report its findings and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [2005] **2006**.

5 Repeal. The following are repealed:

I. RSA 211:67, relative to acceptance of gifts and grants for marine fisheries.

II. RSA 211:70, relative to marine fisheries revenue.

6 Effective Date.

I. Sections 3 and 4 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

2005-1112s

AMENDED ANALYSIS

This bill repeals provisions directing marine fisheries funds.

This bill also adds 2 new members to the commission to study implementing a recommendation of the New Hampshire estuaries project management plan and extends the reporting date of the commission.

SENATOR HASSAN: Thank you, Mr. President. I move HB 199 ought to pass with amendment. House Bill 199 removes references to the Marine Fisheries Fund because the fund is no longer used by the Department of Fish and Game. The committee amendment to the bill adds two members to the Great Bay Estuary Commission. The amendment will add a member from the New Hampshire Commercial Fishermen's Association and a member from the Coastal Conservation Association of New Hampshire. These two groups have a stake in the work of the commission and we feel that it is important for them to have some legitimate input into the discussion. The amendment also extends the reporting deadline for the Great Bay Estuary Commission to reflect the fact that data collection of that commission, which is being done among forty-four communities at the local level, is taking longer than anticipated. The Environment and Wildlife Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 340, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move HB 340 ought to pass. House Bill 340 names the Jones Brook Wildlife Management Area in Strafford County for Ellis Hatch. Mr. Hatch is a former chairman of the Fish and Game Commission and has dedicated a lifetime of service to the state of New Hampshire. The bill also names a building at the Sandy Point Discovery Center in Stratham for former Governor Hugh Gregg. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 444, relative to the surrender and condemnation of game animals to the fish and game department. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 444 ought to pass. House Bill 444 allows the Fish and Game Department to declare a game animal unfit for consumption and issue another tag or permit for the replacement of the animal. Under this bill, it would be the hunter's responsibility to contact Fish and Game if he thought he had an animal unfit for consumption. The bill is not intended to replacement of an animal that the hunter simply finds undesirable or meat that has not been properly cared for. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 446, relative to applications for resident hunting or fishing licenses. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 446 ought to pass. House Bill 446 clarifies the requirements for obtaining a resident hunting or fishing license in New Hampshire. The bill removes the reference to "resident tax receipt", which no longer exists. It also ensures that a New Hampshire driver's license or non driver ID is only required for resident licensees. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 625-FN-L, authorizing borrowing from the state revolving loan fund for the Winnepesaukee River Basin project. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 625-FN (sic) ought to pass. House Bill 625-FN (sic) authorizes the Winnepesaukee River Basin Sewerage Treatment Project to borrow from the state revolving loan fund. This project has been a great success in the lakes region and an important tool for cleaning up our lakes. The bill will make explicit their ability to apply to the state revolving loan fund in order to carry out some needed updates on the facility. The committee heard that the fund contains plenty of capital and that the \$3 million bonding limit on the treatment project will not apply to a loan from the revolving loan fund. The Department of Environmental Services testified that it has been determined that the SRF loan request is not bond debt and thus not subject to the limit. This enabling legislation for the Winnepesaukee River Basin Sewerage Treatment Project...the Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 421, relative to effective dates. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. Despite what the calendar says, I rise because the committee would like to recommit this bill. So I would like the Senate's full support for a motion to recommit.

Senator Hassan moved to recommit.

Adopted.

HB 421 is recommitted to the Executive Departments and Administration Committee.

HB 637-FN, relative to licensure of alcohol and drug abuse professionals. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 637 ought to pass. This legislation would reduce the number of required hours of supervised clinical for individuals with master's degrees from 6,000 hours to 2,000 since they account for the other 4,000 during their studies. Six thousand hours would still be required for those individuals who do not have their master's degree and wish to receive their licensure

through supervised clinical. These counselors are in high demand and are leaving New Hampshire to receive their licensure in Maine. This legislation would put New Hampshire's requirements at the same level as Maine's. The ED and A Committee asks your support for the motion of ought to pass. Thank you, Mr. President.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 672-FN, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

April 14, 2005

2005-1155s

06/10

Amendment to HB 672-FN

Amend RSA 455:16, II as inserted by section 6 of the bill by replacing it with the following:

II. A person shall be guilty of a class A misdemeanor:

(a) If such person purposefully or knowingly commits any of the acts listed in paragraph I.

(b) If such person makes a notarial act, as defined by RSA 456-B:1, I, knowing he or she is not a person authorized by RSA 456-B:3 to perform a notarial act.

2005-1155s

AMENDED ANALYSIS

This bill:

I. Adds commissioners of deeds to the law on notaries public and commissioners.

II. Adds penalties for misconduct by notaries and justices of the peace, and unauthorized persons who perform notarial acts.

III. Adopts the Uniform Law on Notarial Acts.

IV. Repeals the Uniform Acknowledgment Act and the Uniform Recognition of Acknowledgments Acts.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 672 ought to pass with amendment. House Bill 672 clarifies the term "commissioner" and changes it to "commissioner of deeds" to avoid confusion. It also increases the fee to become a notary to \$75, with the additional \$25 going to the preparation of manuals, enforcement of notarial misconduct and computerization of applications. This legislation would also establish civil and criminal penalties for misconduct. Please join the ED and A Committee and support the motion of ought to pass with amendment. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 272-FN-A, making an appropriation to the barn preservation fund. Finance Committee. Inexpedient to legislate, Vote 4-1. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move HB 272 inexpedient to legislate. The House Finance Committee appropriated \$1 for this bill. The Senate Finance Committee has continued a policy of not voting for legislative specials and not appropriating \$1 for bills. While historic barns are an important part of New Hampshire's history, the best place to discuss how much should be appropriated for their preservation is during the discussion on the budget. This is not a motion against the policy, but against legislative specials. The Finance Committee asks for your support of the motion of inexpedient to legislate.

SENATOR JOHNSON: Mr. President, I just want to say that I echo the comments of the previous speaker because I think it is a very important part of our culture and a very important part of tourism in the state. I would hope down the road that there is some way that we can figure out a way to make an appropriation that would be suitable for everyone to be able to take a look at what's in their district. Senator Gallus shared some of his pictures that he brought down from Coos County with me. Certainly there are some wonderful structures out there. I hope that someday we can continue to take care of them. Thank you.

SENATOR FULLER CLARK: Thank you, Mr. President. I, too, would like to rise in support of the policy and recognize the need that this should become part of the budget decisions, and also to note that barn preservation in New Hampshire is a very, very important economic tool for the state that we have seen successful programs that have been funded in numerous other states across the country. Wisconsin, Illinois, are just some examples. And that I do hope that the Senate will recognize the significance of this program in terms of helping to drive our tourism economy. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Morse for the committee.

Senate Finance

April 13, 2005

2005-1110s

08/01

Amendment to HB 401-FN-A

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose; Reports. The moneys appropriated in section 2 and section 3 if appropriate, of this act shall be used to preserve jobs at the Portsmouth Naval Shipyard and for long-term strategic planning in an effort to keep the shipyard open. The money shall also be used for long-term advocacy in Washington, D.C., potential legal fees, costs of publicity and promotion of efforts to save the shipyard, including, but not limited to, compilation of data and documentation, and production of informational print and video material. The person in charge of the Seacoast Shipyard Association shall make 3 reports detailing the manner in which the moneys are being expended on June 1, 2005, on June 30, 2006, and on June 30, 2007. The report shall be given to the senate president, the speaker of the house of representatives, and the governor. The cities and towns within the range of economic influence of the Portsmouth Naval Shipyard are encouraged to appropriate funds from within their budgets to build a fund if the closure of the base is again threatened.

2 Appropriation. The sum of \$40,000 for the fiscal year ending June 30, 2005, is appropriated to the state treasurer for the purpose of funding the Seacoast Shipyard Association for the purposes of section 1 of this act. The funds appropriated in this section shall not lapse until June 30, 2007. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

3 Contingent Appropriation. The sum of \$60,000 for the fiscal year ending June 30, 2005, is appropriated to the state treasurer for the purpose of funding the Seacoast Shipyard Association for the purposes of section 1 of this act. The funds appropriated in this section shall not lapse until June 30, 2007. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

4 Contingency. If the Portsmouth Naval Shipyard is listed on the Base Realignment and Closure (BRAC) list, due to be published by the Department of Defense on or about May 16, 2005, as a facility recommended or scheduled to be closed, then section 3 of this act shall take effect. If the Portsmouth Naval Shipyard is not listed on the BRAC list, then section 3 of this act shall not take effect.

5 Effective Date.

I. Section 3 of this act shall take effect as provided in section 4 of this act.

II. The remainder of this act shall take effect upon its passage.

2005-1110s

AMENDED ANALYSIS

This bill:

I. Appropriates an initial \$40,000 to the state treasurer for the purpose of funding the Seacoast Shipyard Association.

II. Appropriates an additional \$60,000 if the Portsmouth Naval Shipyard is recommended to be closed.

III. Requires the Seacoast Shipyard Association to file 3 reports relative to how such appropriations are spent.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 401 ought to pass with amendment. This legislation is very timely as the Base Realignment and Closure completes their list of bases to be reviewed for closure on May 16, 2005. The committee then makes its recommendation to the President on September 18, 2005 as to which bases should be closed. This legislation appropriates \$40,000 to the Seacoast Shipyard Association immediately. If the Portsmouth Naval Shipyard is on the closure list, a remaining \$60,000 will be appropriated for the purpose of trying to remove the Shipyard from the list. As the Portsmouth Naval Shipyard is an economic engine for our state, please support this legislation appropriating funds for the purpose of keeping the Shipyard open. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Morse, can you tell this body what the state of Maine is doing on this situation? I think it is rather important seeing that half of that shipyard is in Maine.

SENATOR MORSE: The state of Maine had previously appropriated \$100,000 for this cause and just recently appropriated an additional \$25,000 and the Governor of Maine has stated that they are watching this and, if additional funds are needed, they will be there to support it.

SENATOR FULLER CLARK: Thank you very much, Mr. President. Senate Bill 401, making an appropriation to the Portsmouth Naval Shipyard Association of \$100,000 and \$40,000 now and an additional \$60,000 as you

heard from Senator Morse, if needed, after the list has been published. We just received information this morning that that list is going to be published on Friday the thirteenth. So it is urgent. It is critical. I believe that this is one of the most important pieces of legislation that we in the Senate will vote on this year. By passing Senate Bill 401 unanimously, you will send a united message from the state and the Governor to Washington that we recognize that preserving the oldest and most efficient shipyard in the nation is essential to our national security as well as to the nation's, the state's and the shipyard's economy. If you have not received this publication which just came out this week, which looks at what would happen in New Hampshire, the economic impact to New Hampshire, of the closure of the Portsmouth Naval Shipyard, I will be happy to get you a copy of this. It is really clear that the shipyard is an economic engine for our state as well as for the region. And that you will also perhaps be aware that the shipyard has a record equal to none in terms of the time that our employees there are able to repair and turn around a given submarine. It is the most efficient and effective Navy yard in the country for the work that it does. It houses a skilled workforce that is equal to none, that once lost we will not be able to replace for this region or for the nation. So I urge you to vote for this legislation and to realize that by doing so, we are going to send a message to Maine and to Massachusetts of our commitment and that we are going to lend essential credibility to the Shipyard Association and the federal delegations of Maine, New Hampshire and Massachusetts in their efforts to keep the shipyard off the base closure list and open. And, on behalf of my district, and of the citizens of the seacoast and the state, and especially on behalf of the 4,800 civilians and 800 military employees who work there, I want to thank you for your urgent attention to this legislation and to your support and I would like to call for a roll call. Thank you.

SENATOR GREEN: Thank you, Senator, for taking a question. I guess I am asking, what was the reasoning to split the contribution in half instead of \$100,000 like the state of Maine did originally?

SENATOR MORSE: Thank you for the question. The captain that came in to speak to us, when he came in, he said to us that, if they weren't on the closure list on the 16th of May, that they would only need the sum of little less than half. We determined that to be 40 percent. That is why we approved the \$40,000 and said that if you do go on the list, you can have the additional \$60,000.

SENATOR D'ALLESANDRO: First, I think everyone in this chamber recognizes the significance of the Portsmouth Naval Shipyard. We've taken two significant hits in this area with base closure. We lost the base in Limestone, Maine, which was a very significant negative impact to Maine, and we lost Pease Air force Base in New Hampshire. Now we were able to recover from Pease Air force Base because we got the land and we have been able to utilize the land, using really that good innovative New Hampshire spirit. With the loss of the shipyard, we lose 5,000 jobs and an enormous economic impact. An enormous economic impact, into the mega millions of dollars. Those are very good jobs, at very good salaries, that have very good benefits. Those jobs are not replaceable in this environment. They are not replaceable. Most of those men and women are skilled craftsmen who have been on those jobs for a number of years. The yard has proved to be an efficient engine in terms of the reconstruction, the retrofitting of these nuclear submarines. The loss of this yard, I think, would have, as I said, a terrible, negative economic impact. We

are not in a robust economy at this point. As I looked at the numbers today from our business taxes and from our taxes across the board, the recovery in New Hampshire has been steady, but it hasn't been robust. The loss of this shipyard would cause irreparable damage to our economic stream. I think we all have to recognize that as we move forward. Chairman Morse, we are in the process of a budget situation. The loss of this shipyard could have a very significant negative effect on the ancillary services that take place in that greater Portsmouth area. So it is very important that we express to the federal government, to our congressional people, both in the House and in the Senate, the significance of this situation. Thank you, Mr. President.

SENATOR BARNES: Senator D'Allesandro, you mentioned Limestone and the **TAPE INAUDIBLE** and the base in the Pease area. It is also my understanding, Senator, that Fort Devens also in that area, also closed. I wouldn't want to leave that out of your comments.

SENATOR D'ALLESANDRO: That is correct. Thank you for bringing that to my attention Senator, I appreciate that. Fort Devens has been significantly downsized. It almost is nonexistent to this point. Brunswick Naval Air Station has been downsized. So we have suffered in this area tremendously as a result of base closures. I don't think that the economy and the region could really stand up to this one.

SENATOR BARNES: Thank you.

SENATOR GREEN: Thank you, Mr. President. Many of you may not realize that I deal with the largest number of employees at the shipyard come from Rochester and Somersworth which are both in my district. It is a major economic impact. I also want to say that I went through the process of redeveloping Pease in the early days when we got the land from the Air Force and redeveloped it. That was redevelopable. You could do that. It was a facility that was saleable. You could go out and talk to people about locating there, especially with the runway and so forth. But with the case of the shipyard, that is not the case. At best, it could probably get some private work as a nongovernmental facility. But we will never replace that payroll basically. The other issue that you have with the shipyard, which a lot of people don't realize, and I don't even know why they are even considering it to be closed, it's one of the few commissioned facilities for nuclear. You don't re-commission or ask to get new commissions for nuclear very quickly. I want to say to you I am not optimistic. There is a lot of forces at work here, and the shipyard is definitely in jeopardy. So, I mean, I'm trying to be realistic, but I also am not happy with what I'm hearing as feedback at the federal level. Now a decision hasn't been made. My main purpose for speaking today is we **TAPE CHANGE** so I just want to make sure that we are all on the same page here. If we are on the list, those of us in this Senate are going to be asked to step forward and be part of the solution and not part of the problem. So, I'm encouraging you to really remember that because I think we are going to be back here in a little while talking about this again. These are very, very important jobs. They have a great deal of impact on the economy of this state and they affect a lot of communities in this state, around this Senate. Not just my communities, but a lot of us. We do have an awful lot of people who do work at the yard and it is really going to have an impact on my community. Thank you very much.

SENATOR BURLING: Thank you, Mr. President. I don't do this very often, but I am going to stand and talk about patriotism. We talk about

money and the importance of making an economic contribution to fighting for the shipyard. But every time I look at the Senate President I notice to his left is the shipyard on our flag. I do not understand how an administration decides it's a good idea to close something that is as central to New England and to the history of this country as the Portsmouth Naval Shipyard. I do not understand how we as a Senate, sit idly by while we talk and talk and talk about homeland security and watch while people raise the specter of consolidating nuclear submarine facilities into a narrower and narrower framework around the Gulf of Mexico. It's madness and I think that we should simply say it. I am standing up here as my patriotic duty to say we ought to let everybody in Washington know with every gesture we can make that this is a bad idea. Thank you, Mr. President.

SENATOR BARNES: Senator Burling, my good friend, I heard you talk about administration. I just want to make it clear to you that it is not just this administration; it has been other administrations on the other side of the aisle that also have voted to close bases. Just to make it perfectly clear, it isn't "this" administration that is currently in Washington.

SENATOR BURLING: I want to acknowledge in every way I can that this wasn't a partisan speech. It had more to do with Mr. Smith goes to Washington, if you will.

SENATOR BARNES: He's not there anymore.

SENATOR BURLING: No, I noticed.

SENATOR BARNES: I have been asked by one of our Senators, one of our good colleagues, to remove my seconding motion on the roll call. Out of respect, I know that Senator Foster would very much like to join with the rest of us, and that is not going to be possible because he is doing something else today. So I am going to remove, but I would also like to ask you a parliamentary question. I know that we can go to Brenda and all register our votes, but Senator Foster won't be able to do that. So, if somebody checked the record, my belief is that his name won't be on there. I was asked by one of my colleagues. Is it possible for a unanimous? That would mean that Senator Foster would be included with that, or could be perceived as being part of that. If it isn't, if it is not possible to do that, I think that we should table it until Senator Foster is here. Out of respect.

SENATOR EATON (In the Chair): With all due respect to Senator Foster, too, I believe that it is very important for this bill to get out of this body so that it can get to the Governor's desk.

SENATOR BARNES: Okay. If I can continue for just a second. Is there something in our rules that say that we can ask for a unanimous? I don't think I have ever heard that before.

SENATOR EATON (In the Chair): I think that we have a solution for that, Senator.

SENATOR BARNES: What might that be, Mr. President?

SENATOR EATON (In the Chair): I think that Senator Fuller Clark will take care of that for us. She will make a statement at the end.

SENATOR BARNES: Thank you.

SENATOR GALLUS: Thank you, Mr. President and members of the Senate. I just want to say that the people in the north country realize what an important economic engine to the seacoast and to the state of

New Hampshire the naval shipyard is. I received unrequested on my part, numerous letters from various boards of selectmen in my district, including the city of Berlin, New Hampshire, Randolph, New Hampshire, the selectmen in North Stratford, the selectmen in Northumberland who requested that we support this legislation for the Portsmouth Naval Shipyard. Those of us from Berlin know of the aid and support given to us by the state of New Hampshire in our time of need, and we know how important the shipyard is to us. I think as Representative...Senator Burling has stated, we have to be very vigilant in case anything does happen. Thank you.

SENATOR KENNEY: Thank you, Mr. President. I'd also like to echo my support for House Bill 401. In the southern part of my district in Wakefield, Brookfield, Wolfeboro, Farmington, Middleton and Milton, I have many workers that work at the shipyard, much like Senator Green, Senator Martha Fuller Clark, Senator Hassan. We have a lot of these folks in that part of the state that work there. I would also like to mention another group. The military retirees. This is a facility that has a medical center. It has a dental clinic. It has a base exchange. It has a commissary. Our military retirement community relies heavily on this particular facility. So as our President, as the Pentagon, as our congressional delegation look at this facility, not only for jobs, I would also like to include that it is an important facility for our retirees. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. As someone representing the greater Dover area, I felt that I should rise to also express my support for this measure. I have been a resident of the area since the Pease Air Force Base closed. And while we have been successful in recovering from that, I think it is pretty clear that this would be a different story and that this would be very, very difficult to recover from. The entire area. So on behalf of my constituents whose lives are seriously impacted by this, I would just like to thank my colleagues for the passion with which they have embraced support for this.

SENATOR HASSAN: Thank you, Mr. President. I rise to echo all of my colleagues' comments as a Senator from the seacoast. This obviously has an impact on my district as well, but I think what's most important about today's session is that the ripple effect at closure of this base would have in this state, is being reflected in the ripple effect of speakers you see arising here, each one of us with our own story about the impact of the shipyard on this wonderful state, and its need for national security for our wonderful country. Thank you.

SENATOR FULLER CLARK: Mr. President, what I would like to do is to withdraw the request for a roll call and to ask for a voice vote, and then I would like to speak. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Fuller Clark requested that this vote be recorded as unanimous. Without objection the Clerk was directed to record the vote as unanimous in the Journal.

HB 111, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire. Health and Human Services Committee. Ought to pass, Vote 4-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Mr. President. I move House Bill 111 ought to pass. Although cervical cancer is preventable, economic, cultural, geographic, and social barriers to better preventions still remain. House Bill 111 will lead to better public awareness of the disease and identify strategies, technologies and vaccines for treatment. The Dartmouth Medical School is home to the lead researcher in an international effort to develop a vaccine for cervical cancer and has offered its assistance to the House Bill 111 study, a study that will put New Hampshire on the forefront of eliminating cervical cancer. The committee recommends ought to pass on House Bill 111 and I thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Mr. President. I, too, rise in full support of House Bill 111. I really took a lot of time, as I do with all of my bills, but this piece of legislation stood out to me as one of the most major piece of legislation that we could come up with in our committee this year. We have a great opportunity to cure cervical cancer in the not to distant future. This bill goes a long way in allowing us to put the efforts in place to be able to do that in working with Dartmouth Medical Center and their great scientist up there and doctors and physicians who will be also working on this particular situation. Cervical cancer is a very deadly disease. It is one of the deadliest diseases that women are inflicted of. Hopefully, and I believe, painstakingly and also in a positive manner, I believe that we will go and cure this disease, in probably our lifetimes. I ask you all to please vote ought to pass on this bill. Thank you.

Adopted.

Ordered to third reading.

HB 82, relative to political committees of political parties. Internal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Larsen for the committee.

Internal Affairs

April 14, 2005

2005-1148s

03/01

Amendment to HB 82

Amend the bill by replacing section 1 with the following:

1 Political Expenditures and Contributions; Definitions; Political Committee of a Political Party. Amend RSA 664:2, V to read as follows:

V. "Political committee of a political party" means **a** [the] state, county, **regional**, city, ward, or town committee of a political party. **A regional committee shall be composed only of members who are residents of towns or cities that form a contiguous land area, and shall have been created and approved by the political committee of the same state political party. To create regional committees, a political party shall amend its by-laws to authorize them in principle; a copy of such by-law authorization and evidence of the approval for each regional committee by the state committee shall be filed by the political party with the secretary of state before the first Wednesday in June of that year.**

2005-1148s

AMENDED ANALYSIS

This bill changes the definition of "political committee of a political party" to include certain regional committees. This bill also clarifies certain reporting requirements for political committees.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 82 ought to pass with amendment. House Bill 82 changes the definition of a political committee of a political party to include certain regional committees. The bill also clarifies the language regarding reporting requirements for political committees. This bill encourages political involvement by regions rather than simply following town or county lines and leaves the ultimate authorization for the formation of such regional committees to the state political parties. While the bill as amended by the House may have prevented towns from having both the town committee and a regional committee, this committee amendment clarifies that regional committees consisting of the contiguous groups of towns, may coexist with other committees. Reporting of receipts and expenditure procedures is also clarified in the bill. The Internal Affairs Committee asks your support for the motion of ought to pass with amendment.

SENATOR BOYCE: I rise to oppose the ought to pass. After considering this, after the committee reported it out, thinking back on it, it appeared to me that what this bill was intended to accomplish can already be accomplished under existing law by simply forming them as stand alone political committees as PACs. And that there is no need for going to this...to do this. So I would ask that we vote down the ought to pass.

SENATOR LARSEN: Senator Boyce, you and I were in committee when we heard that part of the problem is that the forms for a regional committee to file with the Secretary of State's Office don't exist. The people who created regional political committees wanted to follow the law and they asked us to change the forms at the Secretary of State's Office so they could properly report their expenditures and receipts. If we don't pass House Bill 82, there will continue to be a problem for people who are properly trying to report their political activities. They, right now, have to file under the name of a town, but they are not a town committee.

SENATOR BOYCE: There would be no problem for them to file as a PAC just as the Senate Majority PAC, the Senate Minority PAC. It could be the Southern Grafton PAC. They can form a PAC of any composition. It can be from an area or towns or companies. Any affiliation of people can file a PAC. So this is just another. They are just another type of PAC is all that it is. They would just have to follow the rules that the PACs have to follow.

SENATOR LARSEN: I thought you and I both understood the need for this bill and that is why we had a unanimous vote in the committee.

SENATOR BOYCE: I understand that and I, on thinking about it later, determined that it was unnecessary.

SENATOR LARSEN: Thanks.

Amendment failed.

SENATOR HASSAN: With respect to Senator Boyce, the testimony we heard in committee did not address the issue that he is now raising. I don't know what the procedure is. Perhaps there is a parliamentary inquiry. Could we move to recommit at this time?

SENATOR EATON (In the Chair): Are you making that as a motion?

SENATOR HASSAN: Yes.

Senator Hassan moved to recommit.

Motion failed.

The question is on the motion of ought to pass.

Motion failed.

Senator Boyce moved inexpedient to legislate.

SENATOR BURLING: Mr. President, I wonder if a member of the committee or a member of the new majority, would yield to a question?

SENATOR EATON (In the Chair): No one has spoken yet. Speak.

SENATOR BURLING: If I may, Mr. President. It goes without saying that all of us trust the committee system to give us with an inflow of information that allows us to vote in an appropriate, informed, and intelligent manner. I just say to you as your colleague, however this vote comes out, I find it hard to do when you have apparently taken some action that is not consistent with what your committee did, and you pop it out on us. I don't mean to say "you" 'cause I don't know who you are or when you decided to do this, but really, it would be fair to the rest of us to try to understand what is going on in your thought process. These election law items frequently are complicated issues which we rely on the committee to digest for us and give us guidance on. We thought we understood a 5-0 ought to pass with amendment. I really think this would be an opportunity when it would be really a good idea to put in some way that the rest of us could understand what you're up to. If it is merely taking a shot at somebody's regional political committee, this is the wrong place to do it.

MOTION TO TABLE

Senator Hassan moved to have HB 82 laid on the table.

A division vote was requested.

Yeas: 9 - Nays: 13

Motion failed.

The question is on the motion of inexpedient to legislate.

SENATOR D'ALLESANDRO: I rise to make a motion, Mr. President. I move to recommit. Excuse me, to re-refer.

SENATOR EATON (In the Chair): We need to defeat the ITL. We have had one motion to recommit, which is a higher motion. The re-refer is a lower motion.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry to you, Mr. President and I truly mean this. Is it not the case that 91-A, the right-to-know law, requires that an action taken even by the majority party when it is discussing action on a bill, shall be taken in a public meeting? And, is it not the case that at some point here, obviously as the decision has been taken by the majority, to change a committee vote? I believe that is the law.

SENATOR EATON (In the Chair): I would defer to our attorney who is going towards the window.

SENATOR BARNES: Senator Burling, in my sixteen years up here, and you have a good number under your belt, I have never seen that brought up and many times I have seen committees overturned in the House and here in the Senate without 91-A being brought into it. I am not a lawyer, but my assumption is that what is happening here today is perfectly legal and perfectly okay, because sixteen years it has never been challenged in my stay here.

SENATOR HASSAN: Thank you, Mr. President. I just want to be clear for the record about what this bill is about, what we heard in committee, and why I oppose the motion to ITL. This was a bill brought through the House and then over to the Senate for a very simple reason. Two years ago a group of Democrats in the northern part of the state realized that they had difficulty organizing by town and by city because of geography. They came to the Democratic State Party Convention in 2003 and asked to form a regional committee so that they could have a better cohesiveness and better political participation in that part of the state. The Democratic Party approved that and then last year, this regional committee, which is fully vetted and approved by its party, discovered that they had difficulty filing the appropriate papers in the Secretary of State's Office, and, being good political citizens, they came to the House and then to the Senate for support simply so that they could comply with all existing reporting laws and identify themselves to the state as a political party committee just the way all other political party committees do in this state, whether they be wards, cities or towns. We had a full hearing on this. We had the Secretary of State's Office participation. We voted on it 5-0. It is troubling to those of us on the committee to hear for the first time today in chamber, that the majority has changed its mind, at least members of the committee have changed their mind without further discussion. I don't know what's behind it. I do know that this was simply an attempt by politically active citizens to do the right thing and make sure that the Secretary of State's Office and all of the citizens of New Hampshire could be cognizant of what they were doing. So I don't understand the reason for an ITL here. I think it was a good bill, fully vetted. It got a 5-0 vote in committee, and I would urge my colleagues on both sides of this aisle to defeat the ITL. Thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I, too, rise to question the inexpedient to legislate. We, as political people, are convinced that doing the right thing is being accountable. This allows for an entity which has formed to be accountable. To follow all of the rules and regulations of the state. Follow the rules and regulations set forth by the Secretary of State. Follow the rules and regulations that we have put in place, and to encourage participation. I thought that was what we were here for, and to do it properly. When this committee found that they had to change this to be a regional rather than an individual entity, they sought the mechanism to make it right. I cannot understand why doing the right thing is the wrong thing. Now wait a minute, this is America. We say comply to the rules. By the way, Susan Almy is a sponsor, Mr. President and, you know, this is the second time in this session that I have agreed with her or that she has agreed with me. So I feel privileged in that respect. But doing the right thing. Representative Almy asked us to do the right thing. We are not shutting anybody out. We are opening up the process. As Senator Hassan says, it was looked at by the committee. It got a unanimous vote out of the committee and it wasn't one of those 1-0 unanimous votes, it was a 5-0. So it just seems to me that we should support voting against the inexpedient to legislate, and vote the ought to pass and move forward. Thank you, Mr. President.

SENATOR BARNES: Senator D'Allesandro, you have been up here a period of time in the Senate and had a period of time over in the House. How many times have committee reports been overturned? What I'm hearing here, it almost sounds like this is the first time a committee report has ever been overturned. So can you tell me how many times in your tenure, committee reports have been overturned? We have already done it this year three or four times.

SENATOR D'ALLESANDRO: Thank you very much for the question, Senator Barnes. As a matter of fact, we overturned a committee report on one of my pieces of legislation. I'm thrilled about that. I'm excited about it. If the committee report is unacceptable, you overturn it. But it appears to me...it is not something that just happened today. You are absolutely right. It's happened on more than one occasion.

SENATOR BARNES: Thank you very much, Senator. So this is not a first time?

SENATOR D'ALLESANDRO: It is not a first.

SENATOR BARNES: Thank you very much.

SENATOR CLEGG: Senator Boyce, if I understood you, the first time you stood up, this group can still register as a political action committee, still do the right thing, report all of their contributions and all of the political action that they take, and they do so just as any senator does running for office. Is that correct?

SENATOR BOYCE: Absolutely.

SENATOR CLEGG: So then there is nothing in here that stops them from being legitimate?

SENATOR BOYCE: No. There is nothing that would prevent them from being legitimate and filing forms just as any other political committee does.

SENATOR CLEGG: Thank you.

SENATOR LARSEN: Senator D'Allesandro, isn't it true that these regional committees are actually part of a political committee and the only way to file as a political arm or a subdivision of a political committee, in other words, this is a regional democratic committee that is within the New Hampshire...within an authorized by the New Hampshire Democratic Party through its bylaws? In order for them to file, isn't it true that they don't have a way to file as who they are? They would have to file under our chairman's suggestion, as a separate arm, distinct and not part of, the New Hampshire Democratic Party. They are proud to be part of the New Hampshire Democratic Party. They want to follow the rules. They want to file properly and they are simply asking to be recognized as a possible entity within a political party and file legally as such. Isn't that true?

SENATOR D'ALLESANDRO: That is absolutely true.

SENATOR LARSEN: Thank you, Senator D'Allesandro. Further question of Senator D'Allesandro. Because you are oftentimes our Senate historian, with experience in both the House and in the Senate, isn't it more unusual to have the chair of a committee overturn his own committee without telling his committee that he is going to overturn it?

SENATOR D'ALLESANDRO: That is an unusual occurrence.

SENATOR LARSEN: Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. Having served as the chair of the bylaws committee for the Democratic Party, I would like to tell you the origins of where this legislation came from. That committee met and heard from many individuals in the state that, in certain parts of the state, that serving simply as a member of the county committee was difficult because of the size of the counties and of the physical barriers for getting together. So the recommendation that

came forth from the Democratic Bylaws Committee, was that we allow for the formation under the county committees, for there to be smaller regional committees. That was accepted and passed by our bylaws. Those smaller regional committees were created. They came together. They decided that, in order to do the work of the Democratic Party in their region, and they also were part of the county committee, but that they needed to raise their own dollars. When they went to file their report, to report their political contributions to the state, there was no mechanism for them to be able to legally do that. The Secretary of the State came forward and recommended that this legislation come before the House and the Senate so that we would have a clear and open and transparent way of recording those political dollars. That is the origin for this legislation. That is the reason for it coming forward. It is part of an effort to let the citizens of this state know how we are organizing our political parties and how the dollars that are coming forth to help those political parties are being accounted for legally at the state level. Thank you.

A division vote was requested.

Yeas: 13 - Nays: 9

The motion of inexpedient to legislate is adopted.

HB 154, relative to changes of party registration on primary day. Internal Affairs Committee. Inexpedient to legislate, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move inexpedient to legislate on HB 154. HB 154 would require undeclared primary voters to stay in the party whose ballot they took for ninety days following the primary election. While proponents of HB 154 claim this will help strengthen political parties, the members of the Internal Affairs Committee believe that corralling people into political parties and then forcing them to stay there for ninety days is not a good way to strengthen the parties. Rather, we believe the best way to strengthen the parties is for the parties to communicate their beliefs to the voters in such a way that the voters are persuaded to commit their time, energy and votes to the parties. The Internal Affairs Committee asks your support for its unanimous recommendation of inexpedient to legislate.

SENATOR BARNES: Thank you, Mr. President. Senator Bragdon, does voting inexpedient to legislate on this piece of legislation protect those one-third of our voters that register as independents?

SENATOR BRAGDON: I am sorry, Senator. I missed the first part of your question.

SENATOR BARNES: Does voting inexpedient to legislate on this piece of legislation, going along with the committee's unanimous report, protect the one-third of the voters out there who are independent?

SENATOR BRAGDON: Absolutely.

SENATOR BARNES: My constituents, your constituents, our constituents?

SENATOR BRAGDON: Absolutely. Yes.

SENATOR BARNES: Thank you very much, Senator.

SENATOR LARSEN: I, too, rise to applaud the motion of inexpedient to legislate. There are two really good reasons why this bill should be killed just as fast as it raised its ugly head. That is that people should be encouraged to join a party because of the power of its ideas and the

strength of its candidates. The idea that somehow you will force people to join your party by making them hang in there for ninety days and then go back and unregistered is very wrong in my mind. The second really big reason is three simple words, well I guess that adds up to four. The New Hampshire Primary. If we want to keep the New Hampshire Primary as strong as it is, this nation has to see us as an entire state. Having a voice. Having done our homework and reviewing the Presidential candidates entirely. So, for this reason, I applaud the inexpedient to legislate and am happy to see this bill go down in flames. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 171, relative to nicknames on ballots. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 171 ought to pass. HB 171 permits candidates to have nicknames by which they are known in the community printed on ballots. This bill stems from the most recent election when the Secretary of State's Office firmly enforced the rule that any nickname on a ballot would have to derive from a candidate's given name. This bill would allow a longstanding nickname to be used, even if it is not related to the given name. The Internal Affairs Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 277, relative to special elections for executive councilor, state senator, and state representative. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 277 ought to pass. House Bill 277 prohibits special elections for Executive Council, State Senate, and the State Representative after March 15th in the second year of a biennium. Any such election after this point would allow for only a brief period, if any, of effective representation before the campaign filing period begins again. There is already a limit on special elections in the law. This bill simply fixes the language to draw a clear line. The Internal Affairs Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 339, relative to electioneering at polling places. Internal Affairs Committee. Ought to pass with amendment, Vote 4-1. Senator Hassan for the committee.

Internal Affairs

April 14, 2005

2005-1150s

03/05

Amendment to HB 339

Amend the bill by replacing section 1 with the following:

1 New Paragraph; Preparation of Polling Place; Arrangement; Electioneering. Amend RSA 658:9 by inserting after paragraph III the following new paragraph:

IV. By 5:00 p.m. on the day before any election, the moderator shall post outside each polling place a description of areas where electioneering activities are permitted and prohibited, pursuant to RSA 659:43, at that polling place. The moderator may during election day, for good cause, alter the areas where electioneering activities are prohibited. Failure to post this notice shall not affect the moderator's authority to restrict electioneering. Upon submission of proof to the attorney general that no notice was posted, the attorney general may issue an order to the moderator requiring future compliance with this statute. Any moderator who knowingly fails to comply with such an order shall be guilty of a violation.

MOTION TO TABLE

Senator Hassan moved to have HB 339 laid on the table.

Adopted.

LAI D ON THE TABLE

HB 339, relative to electioneering at polling places.

HB 266, relative to the procedure for dismissal or suspension of a police chief. Judiciary Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move House Bill 266 ought to pass. House Bill 266 lengthens the time that a police chief has to obtain legal counsel and have him or her prepare a filing for the Superior Court should the chief be given notice of dismissal. Currently, statutes allow only ten days for this to happen. We felt that this was much too short. House Bill 266 changes the amount of time to forty-five days, which is a much more reasonable amount of time. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

SENATOR CLEGG: Senator Green, just to be clear. If I remember correctly, the Municipal Association testified that the cities and towns were in agreement that this was a good idea.

SENATOR GREEN: That is correct.

SENATOR CLEGG: Thank you.

Adopted.

Ordered to third reading.

HB 702-FN, relative to the screening and mediation of medical malpractice claims. Judiciary Committee. Inexpedient to legislate, Vote 6-0. Senator Gottesman for the committee.

MOTION TO TABLE

Senator Gottesman moved to have HB 702-FN laid on the table.

Adopted.

LAI D ON THE TABLE

HB 702-FN, relative to the screening and mediation of medical malpractice claims.

HB 83, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Burling for the committee.

Public and Municipal Affairs
April 15, 2005
2005-1166s
05/10

Amendment to HB 83

Amend the title of the bill by replacing it with the following:

AN ACT relative to the distribution of brochures on family planning services, fetal alcohol syndrome, and human immunodeficiency virus.

Amend the bill by replacing all after the enacting clause with the following:

1 Protection for Maternity and Infancy; Brochure on Fetal Alcohol Syndrome. Amend RSA 132:2, XI to read as follows:

XI. Prepare, in conjunction with the office of alcohol and drug abuse prevention, a brochure which provides information relative to fetal alcohol syndrome ~~[to persons applying for a marriage license and make such brochure available to town and city clerks for distribution under RSA 457:23, H]~~ **and which shall be available to the public in the office of the town clerk and at the check-out counter of the state liquor store.**

2 Duties of the Department of Health and Human Services; Informational Brochure Relative to Human Immunodeficiency Virus. Amend RSA 141-F:3, XIII to read as follows:

XIII. Provide an informational brochure relative to the human immunodeficiency virus ~~[to persons applying for a marriage license and make such brochure available]~~ to town and city clerks for distribution under RSA ~~[457:23, H]~~ **457:28-a.**

3 Brochures Relative To Family Planning Services, Fetal Alcohol Syndrome, and Human Immunodeficiency Virus. RSA 457:28-a is repealed and reenacted to read as follows:

457:28-a Brochures Relative To Family Planning Services, Fetal Alcohol Syndrome, and Human Immunodeficiency Virus. The town clerk shall make available to the public, in the office of the town clerk, a list of family planning agencies and services available in the state, the informational brochure relative to fetal alcohol syndrome prepared pursuant to RSA 132:2, XI, and the informational brochure relative to human immunodeficiency virus prepared pursuant to RSA 141-F:3, XIII. The department of health and human services shall supply each town clerk with a sufficient quantity of the brochures initially, to be resupplied upon the request of the town clerk.

4 Marriage License Forms. Nothing in this act shall prevent the use of a marriage license form that includes an affidavit relative to the receipt of certain brochures from the town clerk, provided that the affidavit shall not be executed or completed by the parties.

5 New Section; State Liquor Stores; Brochures Relative to Fetal Alcohol Syndrome. Amend RSA 177 by inserting after section 8-a the following new section:

177:8-b Brochures Relative to Fetal Alcohol Syndrome. The commission shall make informational brochures relative to fetal alcohol syndrome, prepared by the department of health and human services under RSA 132:2, XI, available to the public at the check-out counter of each state liquor store or through distribution programs run by the commission and calculated to provide the general public with information about fetal alcohol syndrome. The department of health and human ser-

vices shall provide the commission with a sufficient quantity of the brochures initially, and additional brochures shall be available upon the request of the commission.

6 Repeal. RSA 457:23, II and III, relative to the requirement that persons applying for a marriage license receive a brochure concerning fetal alcohol syndrome and the human immunodeficiency virus, are repealed.

7 Effective Date. This act shall take effect 60 days after its passage.

2005-1166s

AMENDED ANALYSIS

This bill requires that brochures relative to family planning services, fetal alcohol syndrome, and human immunodeficiency virus be available to the public in the office of the town clerk. The bill also requires that the brochure relative to fetal alcohol syndrome be available to the public in state liquor stores. The bill removes the requirement in current law that the clerk discuss the brochures with marriage license applicants and that they sign an affidavit confirming receipt of the brochures.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass with amendment on House Bill 83. Mr. President, this bill as amended does the following things. It amends the current requirement that town clerks, not only hand out, but describe fliers relative to family planning, HIV counseling, and fetal alcohol syndrome. The intent of the committee and the purpose of the bill as now amended, does away with the obligation of the clerk to serve as a participant in a discussion. It does away with a requirement that people sign an affidavit on the back of the application for the marriage certificate saying that they have read all of these pamphlets. It does as well, the following things. It provides for these three pieces of literature, the family planning guide, the fetal alcohol syndrome pamphlet, and the human immunodeficiency virus, will be available at the town clerk's office. More importantly, the statute provides that fetal alcohol syndrome pamphlets will be provided to the Liquor Commission who gladly undertook the prospect of distributing them through the liquor stores and through a new program they just started called "Buyer Beware". So the committee asks your support for ought to pass with amendment unanimously.

SENATOR BARNES: Thank you. Senator Burling, would you briefly let this body know why it is important for the committee to vote sending those brochures to the Liquor Commission. You made a very great point during the committee hearing.

SENATOR BURLING: Thank you. I appreciate this opportunity. Very briefly, some of you may know that Michael Dorris was a dear friend and fellow townsman of mine in Cornish. Michael was the father of Abel Dorris and, in raising Abel Dorris, Michael learned about and then experienced the impact of fetal alcohol syndrome. His book, *The Broken Chord* became the leading work on the subject of fetal alcohol syndrome. It was my sad duty to watch over both the death of Abel, who was killed in a motor crash in Lebanon, and subsequently, the death of Michael my friend, here in Concord, the day we passed the school funding plan, excuse me, it was the kindergarten program. As a tribute to my friend, I decided I would always stand when I could, for the principle that letting the people know about the dangers of fetal alcohol syndrome, is one of the things I can do that really makes a difference. I want to tell you I was delighted to contact the

Liquor Commission. Our mutual friend, Commissioner Russell, was superb. She put me in touch with the officer who is more than willing to help and we got a great result here. So thank you, Senator, for the inquiry.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 86, relative to property held in police department property rooms. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

Public and Municipal Affairs

April 13, 2005

2005-1131s

06/03

Amendment to HB 86

Amend RSA 471-C:13 as inserted by section 1 of the bill by replacing it with the following:

471-C:13 Property Held in Police Department Property Rooms. Notwithstanding any other provisions of law to the contrary, all noncontraband abandoned or lost personal property which has *a value of \$250 or more and which has* been held in a police department property room for a period of at least 180 days, *or which has a value of less than \$250 and has been held for a period of at least 90 days*, may be disposed of by the police department by returning it to the finder, if known, if the finder was other than a police officer who discovered the property during the course of the police officer's usual police duties. If the property cannot be returned to the finder, the property shall be sold at public auction with the proceeds to be turned over to the town or city treasurer. Except that any bicycle which has been held in a police department property room for a period of ~~[180]~~ **90** days or more shall be sold at public auction with the proceeds to be used for the support of local bicycle safety programs, or, if no local bicycle safety programs are available, then with the consent of the local governing body, to be used for any other purpose. The police department shall be relieved of all liability for any claim thereafter arising or made with respect to property disposed of under this section. *A good faith judgment of the value of the property by the police department shall be determinative for purposes of this section.*

2005-1131s

AMENDED ANALYSIS

This bill changes the period of time a police department is required to hold certain unclaimed and abandoned property before disposing of it from 180 days to 90 days.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass with amendment on House Bill 86. House Bill 86 deals with what seems a very narrow issue, that is to say how long police departments must retain found and turned in property in their property rooms. We heard testimony at the committee level that, as you might imagine, in some of our busier seacoast communities, lost backpacks, bicycles, and various other kinds of containers, can pile up pretty quick. They asked of some kind of relief from the current 180 day retention requirement.

What we did in committee is prepare an amendment that says "if the property is determined to be of value greater than \$250 they have to retain that property in their storage rooms for the current 180 days. If the police make a good faith determination that the property is worth less than \$250, they retain it for 90 days and then they may dispose of it. The proceeds of the disposal to be according to statute." There is a mechanism for sending the money either to the person who found it or returning the property to the person who found it and turned it in. The committee asks that you vote for ought to pass with amendment on House Bill 86.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 87, relative to the authority of the Carroll county public water system. Public and Municipal Affairs Committee. Ought to pass, Vote 3-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 87 ought to pass. House Bill 87 basically it adds or establishes a water fund, and it keeps separate...that is kept separate away from the general fund within the county budget process. Additionally, in essence this bill will allow the county to collect funds through their water bill to be held in account directly to be used for water system improvements. The Public and Municipal Affairs Committee unanimously recommends an ought to pass for this bill. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 236, relative to the time for filing a motion to rehear a zoning decision. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

Public and Municipal Affairs

April 14, 2005

2005-1147s

06/01

Amendment to HB 236

Amend RSA 677:2 as inserted by section 1 of the bill by replacing it with the following:

677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions. Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the *day after the* date upon which the board voted to approve or disapprove the application; ~~[provided however, that]~~ *in accordance with RSA 21:35. However*, if the moving party shows that

the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 144 hours of the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed. If the decision complained against is that made by a town meeting, the application for rehearing shall be made to the board of selectmen, and, upon receipt of such application, the board of selectmen shall hold a rehearing within 30 days after receipt of the petition. Following the rehearing, if in the judgment of the selectmen the protest warrants action, the selectmen shall call a special town meeting.

Senator Burling moved to recommit.

Adopted.

HB 236 is recommitted to the Public and Municipal Affairs Committee.

HB 469, regulating disputes between homeowners and contractors relative to residential construction defects. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

April 15, 2005

2005-1165s

05/10

Amendment to HB 469

Amend RSA 359-G:6 as inserted by section 1 of the bill by replacing it with the following:

359-G:6 Release. If a homeowner accepts an offer made in compliance with this act and the contractor fulfills the offer in compliance with this act, the homeowner shall thereafter be barred from bringing an action for the claim.

Amend RSA 359-G:8 as inserted by section 1 of the bill by replacing it with the following:

359-G:8 Miscellaneous; Applicability of Chapter.

I. Nothing in this chapter shall create any cause of action on behalf of any homeowner or contractor.

II. This chapter shall not apply to a contractor's right to seek contribution, indemnity, or recovery against a subcontractor, supplier, or design professional for any claim made against a contractor by a homeowner.

III. This chapter shall not apply to a claim brought by a person or entity subrogated to the rights of a homeowner on account of a payment made under an insurance policy.

IV. Nothing in this chapter shall prohibit a homeowner from taking such actions as necessary to prevent unsafe conditions or further deterioration of a residence.

SENATOR BARNES: Thank you, Mr. President. It is my pleasure to move House Bill 469 ought to pass with amendment. House Bill 469 is designed to encourage out-of-court resolution of disputes between homeowners and contractors over residential construction defects. It sets up a process of notice to contractors that if a homeowner believes there is a defect, the contractor has the opportunity to fix the problem or address the issue with a financial settlement. However, if the settlement offer is not to the liking of the consumer, they still retain the right to pursue conventional liti-

gation. Every party involved with this bill supports it. This piece of legislation has been a long time in coming and the Public and Municipal Affairs Committee unanimously recommends a vote of ought to pass with amendment, and the committee thanks you ahead of time.

SENATOR BURLING: Thank you, Mr. President. I want to echo my friend Senator Barnes' tone of delight in this. We have been through some battles this year over residential construction defects and it was a true miracle to see this resolution brought into the committee. It represented good work, hard fought by citizens, and I am delighted to vote for it.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 570, relative to preliminary site plan review and the definition of inclusionary zoning. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 570 ought to pass. House Bill 570 allows a planning board ordinance to require a preliminary review of site plans. This bill will save time and money for both developers and planning boards as major and even minor problems can be identified and corrected through a preliminary review process before a costly fully developed final plan is submitted by a developer. This will help boards and developers take a more proactive approach to reaching a mutually agreeable site plan. Currently a planning board can only make suggestions at its final review; a point far too late for the changes occur without cost to all. This is a positive change to that law. The Public and Municipal Affairs Committee unanimously recommends a vote of ought to pass with amendment for this bill. Thank you.

Adopted.

Ordered to third reading.

HB 40, relative to inspection dates for certain vehicles. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 40 ought to pass. This bill requires recreational vehicles to be inspected annually by July 1st. This bill would allow the same requirements for registering a mobile home as registering a motorcycle. No one appeared in opposition to this bill. The Transportation and Interstate Cooperation Committee unanimously asks for your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 124, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 3-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 124 ought to pass. This bill names a portion of New Hampshire Route 125 the Officer Mel Keddy Memorial Highway. I am honored to present this

bill to you today with the full support of the House and the unanimous support of the Senate Transportation Committee. Please join us in voting ought to pass. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise just to add my support for this. For those of you who don't know, Senator Mel Keddy was a police officer in Kingston who went to the aide of the East Kingston Police Department approximately ten years ago on a traffic stop and was hit and killed in the line of duty on Route 125. His family and others in the community mourn his loss greatly and we are very pleased that this bill has made it to this chamber and we ask for your support. Thank you.

Adopted.

Ordered to third reading.

HB 160, naming a certain bridge on New Hampshire Route 3 between Pembroke and Allenstown. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. I move House Bill 160 ought to pass. This bill names the new double-decker bridge to be built on New Hampshire Route 3 between Pembroke and Allenstown the "Suncook Connection Bridge." The Pembroke and Allenstown schools held a bridge naming contest for their students, and the winning name was submitted by an eighth grader from Pembroke. The Senate Transportation Committee commends the sponsors of this legislation for their work, and unanimously urges the Senate to vote in favor of this bill. Thank you.

SENATOR BURLING: Very briefly. I want to share, Mr. President, a story about our last naming episode. I was happy to sponsor a bill that named a building in Lincoln and a couple of other things. I would just say that my humor was very strong until I got to the House where Representative Chandler, chairman of the committee in question, pointed out that we had just named a building which, as he showed me in a prominent photograph, had already been named by somebody else, after somebody else. So hey, sometimes you win, sometimes you lose.

SENATOR LARSEN: I just rise as the representative...the Senator representing Pembroke and what is oftentimes known as Suncook, to applaud the children of this community. I can assure you that with a name like "Suncook Connection", you're not going to have trouble with another person's name being attached to it. It will also aid in those who can't find Suncook on the map perhaps, because if you look on the map, there is no Suncook on the map. So the name Suncook Connection will be posted on the bridge and I think the children who named it will take great pride as they cross it.

SENATOR ESTABROOK: Thank you, Mr. President. I just wanted to assure everyone that there would be no double naming since the bridge hadn't been built yet.

SENATOR D'ALLESANDRO: Thank you, Mr. President. When one thinks of Suncook, one has to remember Representative Bob Plourde who served in the House for a number of years and who was really the king of Suncook. Bobby Plourde was responsible for getting the State House cleaned because all of the workers, Gabby, Danielle, etc. were from Suncook. Bobby was a great Representative. He passed away with a very serious heart problem. Very well known in the com-

munity for his commitment for that community. He would be happy to know that Suncook is now recognized as an entity in and of itself. Thank you, Mr. President.

SENATOR BARNES: Thank you Mr. President. If we're going to talk about Suncook, I have to rise because Representative Daneault and myself, six years ago, got many of the signs changed that said Suncook six miles away, but there is no such place, and we had them put Allenstown on it, and that is where my good friend Representative Daneault was from. He was not from Suncook; he was from Allenstown and proud of it. He was a selectmen there for 35 years. He was upset that those signs had a sign up there directing people to a place that there wasn't. So Gabby Daneault and myself sponsored legislation to put the correct signs up on some of our highway locations. Unfortunately, there are still some signs that say Suncook. I don't know Senator D'Allesandro, maybe had something to do with keeping them there.

SENATOR MARTEL: **TAPE INAUDIBLE.** Mr. President, I will speak for a moment. I used to work in Suncook. I was the assistant general manager and then general manager of the Grand Union Store. Everybody remembers Grand Union in the days of hay. They had a store in Suncook. My aunt happens to have...my wife, I should say, had an uncle and aunt who owned the drive-in restaurant right next the Grand Union in the shopping center that resided in Suncook. Suncook does exist; it is just the map makers forgot to put it on because it is only a little gully really, that runs underneath the bridge that crosses Route 3, and by pass 28. So for those poor souls who do live in Suncook, I thought I had to stand up and speak on their behalf. Suncook does exist; we just neglect them.

SENATOR BARNES: Senator Martel?

SENATOR MARTEL: Yes, sir?

SENATOR BARNES: I went to the Secretary of State's Office when we got into this Suncook discussion, and I asked him who the Senator was from Suncook. He couldn't tell me. Can you tell me who the Senator is that represents Suncook? I represent 12 towns. Senator Larsen represents a number of towns, and neither of us really are the Senator that has Suncook. Nobody from Suncook votes for us.

SENATOR MARTEL: Well, seeing that the Suncook River divides the town in half, maybe we should have double representation and half of you...one of you represent half the town, and the other one represent the other half of the town. One on the North side and one on the South side. How's that?

SENATOR BARNES: So there is no Senator of Suncook?

SENATOR MARTEL: Well there is one, there is two.

SENATOR BARNES: Thank you, Senator.

SENATOR LARSEN: I'll take the left bank.

SENATOR BARNES: Yes, that figures. I'll take the right side.

SENATOR FLANDERS: I would like to be serious for a minute if I may? I would like to ask Senator Barnes if I may, that this part of the bridge is going to be in Allenstown is going to be accessible to ATVs?

SENATOR BARNES: I will do my best to keep the ATVs off of that bridge Senator Flanders, as long as it says Allenstown.

SENATOR FLANDERS: Thank you. I move the question.

Adopted.

Ordered to third reading.

HB 242, relative to falsification of motor vehicle applications filed with the department of safety. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. I move ought to pass on House Bill 242. This bill requires the suspension or revocation of a license or registration issued by the Division of Motor Vehicles on an application made containing any false statement or fraudulent document. The notes say that while no one appeared at the hearing, the Senate Transportation and Interstate Committee determined that this was a good and useful piece of legislation. Somebody obviously has found the way to get bills through the Senate. Don't show up. We unanimously ask your vote of support. Thank you.

Adopted.

Ordered to third reading.

HB 394, relative to real estate tax lien procedures for tax collectors. Ways and Means Committee. Ought to pass, Vote 2-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move House Bill 394 ought to pass. House Bill 394 requires tax collectors to report the names of current owners of property subject to a tax lien. Currently, tax liens can be reported at the Registrar of Deeds in two different ways, which is creating inconsistencies and confusion. The bill clarifies that the lien will follow the property and not the person. House Bill 394 streamlines the process and the committee recommends ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 462, prohibiting road toll refunds for idling time. Ways and Means Committee. Ought to pass, Vote 4-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 462 ought to pass. House Bill 462 prohibits road toll refunds to trucking companies for idling time, such as when warming up engines on their truck fleets in the morning. While the Department has not approved any refunds, it is important that the state take the step to clarify that such refunds are not permissible. Not only would it nearly be impossible to manage and enforce, allowing refunds in these instances would negatively affect the highway funds, state agencies and local communities. The committee recommends ought to pass on House Bill 462. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 504, relative to the assessment or refund of real estate transfer taxes, and the recording of plans with the register of deeds. Ways and Means Committee. Ought to pass, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 504 ought to pass. The bill allows the Commissioner of Revenue Administration to assess additional taxes due or to refund overpayments of taxes on transfers of real property. Currently, there is no procedure for establishing a record of the transactions between DRA and the Register of Deeds in order to demonstrate what has been collected or refunded by DRA. House Bill 504 will help establish the necessary documentation while maintaining confidentiality. The bill also corrects the statutory reference to filing of certain floor plans with the Registry of Deeds. Two years ago legislation neglected to change a citation to RSA 478:1-a. House Bill 504 corrects the situation and the committee recommends ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

MOTION TO REMOVE FROM THE TABLE

Senator Letourneau moved to have HB 84 taken off the table.

Adopted.

HB 84, relative to compensation of county convention members for county business.

The question is on the committee report of inexpedient to legislate.

SENATOR LETOURNEAU: Thank you, Mr. President. As the members may know, that bill originally started in the House and it was a Rockingham County only bill. It got amended in the House to include the whole state. When it came over to the Senate, the Senate committee that was reviewing the bill didn't like the whole state being included. I have an amendment to bring it back to the original bill. I have spoken to the chairman of the Municipal and County Government of the House and they will accept this.

SENATOR EATON (In the Chair): Point of order. If Senator Letourneau is talking about the ITL motion, we would have to vote that down and then have an ought to pass motion, then he would have an amendment. Do you have an amendment for the bill?

SENATOR LETOURNEAU: Yes. I have given the amendment to the clerk earlier.

SENATOR EATON (In the Chair): The amendment is here. But we can't look at the amendment until we have a declaration as to what is going to happen with the bill. So what is your wish that happens with this bill now?

SENATOR LETOURNEAU: I would like to overturn the ITL motion so I can offer a motion of ought to pass as amended.

The question is on the committee report of inexpedient to legislate.

Motion failed.

Senator Letourneau moved ought to pass.

Senator Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

April 13, 2005
2005-1123s
10/03

Floor Amendment to HB 84

Amend the title of the bill by replacing it with the following:

AN ACT relative to compensation of Rockingham county convention members for county business.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Rockingham County Convention; Compensation for County Business. Amend RSA 24 by inserting after section 9-f the following new section:

24:9-ff Compensation for Rockingham County Convention. Notwithstanding the provisions of RSA 24:9-e and RSA 24:9-ee, members of the Rockingham county convention may receive from the Rockingham county treasury a sum not to exceed \$25 per day for actual attendance at meetings of the convention at the Rockingham county complex and an allowance for travel expenses to and from the place of meeting at a rate per mile not in excess of the rate allowed by the United States Internal Revenue Service to be set by a vote of the Rockingham county convention. In addition, the Rockingham county convention chairperson may approve compensation for members attending to, discharging, or participating in other official county business at the Rockingham county complex, as authorized by vote of the Rockingham county convention.

2 Effective Date. This act shall take effect 60 days after its passage.

2005-1123s

AMENDED ANALYSIS

This bill allows Rockingham county convention members to receive compensation for attending to, discharging, or participating in county business at the Rockingham county complex, as approved by the county convention chairperson.

SENATOR LETOURNEAU: Thank you very much. Yes, I would. I would like to speak to the amendment. The amendment...this legislation, if adopted, would allow county convention members to receive compensation for attending to, discharging, or participating in county business, as approved by the county chair and authorized by the county convention. The law is currently in existence. Our restriction thereby do not provide for compensating legislators who attend public meetings or carry out official business at the county level. In addition, bond council recently cited the importance of convention participation in county business to insure that the officials responsible for ultimately authorizing and improving expenditures are fully aware of what they are voting for. So this bill has been a request of Rockingham County and the Rockingham County Commissioners have sent me a letter and the convention has sent a letter. Everybody is in agreement in Rockingham County. The amendment that you have before you is Rockingham County only. Thank you.

SENATOR MORSE: Senator Letourneau, do we have any idea what this will cost Rockingham County?

SENATOR LETOURNEAU: My understanding is that this would only be in special circumstances where the county delegation needs to appoint a member to do a special duty and it has to be approved by the county chair and authorized by the entire county convention. So, therefore, it

is very limited in scope, but it is required in an RSA so the bonding and the auditors can do it by RSA. That is what I have been told by those at the county.

SENATOR MORSE: Senator, would you have a problem if I asked for this to come to Finance so I could get the answer to that question?

SENATOR LETOURNEAU: No, I wouldn't have a problem with that.

SENATOR ESTABROOK: Thank you, Mr. President. Was this bill amended in the House?

SENATOR LETOURNEAU: Yes. No, it was amended in the Senate. Yes, it was amended in the House. I am sorry. It was amended in Municipal and County Government. It was originally started out as you see the amendment now, and Municipal and County Government says what is good for Rockingham is good for the whole state. Then when it came over here, they said, well the whole state doesn't want this. So I am amending back to Rockingham County only.

SENATOR ESTABROOK: Thank you. That is my point. I don't know whether I have a parliamentary inquiry or what, but we have been handed it as introduced and that is not what the motion is on. The motion is on as amended by the House. So, I feel that we should be allowed to see as amended by the House before we decide whether we want to further amend it.

SENATOR LETOURNEAU: Well, as amended by the House should be in your packet. The packet that you normally get.

SENATOR ESTABROOK: No.

SENATOR LETOURNEAU: No. It wouldn't be in there?

SENATOR ESTABROOK: No, we didn't get that. Thank you.

SENATOR BARNES: Not a comment, but a little more to say about this. Rockingham County, my understanding is, is the only county that has a CPA. That is where the hang up comes and that is why they need this. That was my understanding. Senator Letourneau, is that because of the CPA involvement that we have to do this?

SENATOR LETOURNEAU: Yes, sir. That is correct.

SENATOR BARNES: Thank you.

SENATOR LETOURNEAU: For when they do the auditing.

SENATOR LARSEN: Thank you, Mr. President. This bill was in Internal Affairs. I don't see our chair here, but the Internal Affairs Committee reviewed this bill. There was concern for the way the bill was drafted that, in fact, any number of people might be authorized to be compensated for their attendance at meetings, whether or not they are members of the county convention. The fear was that many counties would see their costs increase as more and more people request a compensation for attending official business. If we accept the floor amendment, we'll just have to worry about Rockingham County's cost going up, because the taxpayers of that county will be compensating people, not only who are in the county delegation, but people who are assigned to subcommittees, people who are authorized by the county commissioners to go review or discharge some other official county business. The fear was that it had some 28-A implications, local cost implications. I correct myself. I sit on more than one committee and it was in Public Affairs that I heard this issue. But the issues are still the same. We had some concerns for the effect on county

taxpayers. So, while I understand Rockingham wanting to compensate people for the work they do, we had some concerns on the effects on county taxpayers.

SENATOR FLANDERS: Senator Letourneau, **TAPE INAUDIBLE** if I am reading this correctly, the only payment that will be made if any county business at the complex?

SENATOR LETOURNEAU: That is correct. And it has to be approved by the county chair and authorized by the county convention. That's the entire convention. There are over 90 members of the Rockingham County Convention.

SENATOR FLANDERS: If indeed they have to go somewhere else after going to the complex, and they had to go somewhere else, would they be?

SENATOR LETOURNEAU: No.

SENATOR FLANDERS: They would not?

SENATOR LETOURNEAU: No.

SENATOR FLANDERS: Thank you.

SENATOR LETOURNEAU: That's my understanding.

A division vote was requested.

Yeas: 10 – Nays: 12

Floor amendment failed.

The question is on the motion of ought to pass.

Motion failed.

MOTION TO TABLE

Senator Morse moved to have HB 84 laid on the table.

Adopted.

LAID ON THE TABLE

HB 84, relative to compensation of county convention members for county business.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 40, relative to inspection dates for certain vehicles.

HB 53, repealing a 1901 law relating to the apportionment of library funds in the town of Haverhill.

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

HB 83, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

- HB 86**, relative to property held in police department property rooms.
- HB 87**, relative to the authority of the Carroll county public water system.
- HB 97**, relative to replacing school budget committee members.
- HB 99**, changing the name of the college for lifelong learning to Granite state college.
- HB 111**, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire.
- HB 124**, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway.
- HB 148**, transferring the New Hampshire estuaries project from the department of environmental services to the university of New Hampshire.
- HB 160**, naming a certain bridge on New Hampshire Route 3 between Pembroke and Allenstown.
- HB 171**, relative to nicknames on ballots.
- HB 199**, relative to fish and game department expenditures for marine fisheries.
- HB 242**, relative to falsification of motor vehicle applications filed with the department of safety.
- HB 266**, relative to the procedure for dismissal or suspension of a police chief.
- HB 277**, relative to special elections for executive councilor, state senator, and state representative.
- HB 340**, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg.
- HB 394**, relative to real estate tax lien procedures for tax collectors.
- HB 401-FN-A**, making an appropriation to the Seacoast Shipyard Association.
- HB 444**, relative to the surrender and condemnation of game animals to the fish and game department.
- HB 446**, relative to applications for resident hunting or fishing licenses.
- HB 457**, relative to excavating and dredging permit exemptions for water conveyance systems.
- HB 462**, prohibiting road toll refunds for idling time.
- HB 469**, regulating disputes between homeowners and contractors relative to residential construction defects.
- HB 504**, relative to the assessment or refund of real estate transfer taxes, and the recording of plans with the register of deeds.
- HB 560**, relative to timber harvesting.
- HB 570**, relative to preliminary site plan review and the definition of inclusionary zoning.
- HB 672-FN**, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts.

ANNOUNCEMENTS RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 1-A, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2006, and June 30, 2007.

HB 2-FN-A, relative to state fees, funds, revenue and expenditures.

HB 535-FN-A, increasing the tobacco tax.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 1-535, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 1-A, making appropriations for the expenses of certain departments of the state for fiscal years ending June 30, 2006, and June 30, 2007. (Finance)

HB 2-FN-A, relative to state fees, funds, revenue and expenditures. (Finance)

HB 535-FN-A, increasing the tobacco tax. (Ways and Means)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 60-FN-A, relative to reimbursement of legal fees of the commissioner of the department of administrative services and making an appropriation therefor.

HB 69, relative to large groundwater withdrawals.

HB 145, relative to the healthy kids corporation.

HB 433-FN-A, relative to planning for public access, recreation, and road management in the Connecticut Lakes headwaters working forest and making an appropriation therefor.

HB 517, establishing a committee to study certain issues relative to construction and demolition waste and establishing a moratorium on the incineration of any construction and demolition waste.

HB 539-FN-A-L, relative to land and community heritage investment program administration.

HB 542, making technical corrections to the uniform trust code.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 60-542, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 60-FN-A, relative to reimbursement of legal fees of the commissioner of the department of administrative services and making an appropriation therefor. (Finance)

HB 69, relative to large groundwater withdrawals. (Energy and Economic Development)

HB 145, relative to the healthy kids corporation. (Finance)

HB 433-FN-A, relative to planning for public access, recreation, and road management in the Connecticut Lakes headwaters working forest and making an appropriation therefor. (Finance)

HB 517, establishing a committee to study certain issues relative to construction and demolition waste and establishing a moratorium on the incineration of any construction and demolition waste. (Energy and Economic Development)

HB 539-FN-A-L, relative to land and community heritage investment program administration. (Finance)

HB 542, making technical corrections to the uniform trust code. (Banks and Insurance)

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

April 28, 2005

The Senate met at 10:00 a.m.

A quorum was present.

Senator Larsen led the Pledge of Allegiance.

INTRODUCTION OF GUESTS**COMMITTEE REPORTS**

HB 38, relative to theft of personal checks and credit cards. Banks and Insurance Committee. Ought to pass, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 38 ought to pass. Currently, there is no monetary value on stolen checks and credit cards until the perpetrator has used them. This places a \$250 value on each check or credit card that is stolen. This

will help the prosecution of the perpetrators. The Banks and Insurance Committee asks your support of the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 42, establishing a statutory joint committee to review and propose changes to state unclassified officers' salaries. Banks and Insurance Committee. Inexpedient to legislate, Vote 3-1. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, again Mr. President. I move House Bill 42 inexpedient to legislate. The committee feels that this joint legislative committee is unnecessary at this time. Please join the Banks and Insurance Committee on the motion of inexpedient to legislate.

SENATOR GREEN: Thank you, Mr. President. As I read the transcripts of the hearing, it says that there was not a whole lot of testimony on this bill. I guess I want to ask the committee at some point, how they came to the conclusion that the legislature itself should not be involved in setting of salaries? I think that we are sent over here to make decisions and, as a body, we are trying to determine what our priorities should be in the budget process. If we do not have the ability to overlook and determine the salaries of state officials, I think we're giving up a great deal of our responsibility. I know that we have turned this over to a...as a result of a study, but just for the record, that study committee came in during a Conference Committee. Never had a hearing, and was jammed through in the budget in the year it was passed. I think those of you who are new here understand how those things work as you are listening to people. The people who have been here understand how that happens. This was not something that was done by the legislature in a way which is the normal way you pass laws in this body. I suspect that this particular issue is one that we should be paying more attention to. If we are going to give up the right to determine the salaries of the people who work for the state of New Hampshire, we are giving up a basic right and a basic component of the budget that we passed. We are just accepting that there is a schedule and that we should have nothing to say about it. Let me go back to when I was a Senator...Senate in 1973. We went through every unclassified salary and knew exactly what every individual was making. I would like to know, for the record, how many of you know what the salary of every individual in this state government is? Unless you have that list and go through it on a regular basis, you will not be able to decide, and you will not know, what is being done on the inside of the bureaucratic structure. I suspect that that is something you should know, and you should not give up that authority. I think that what this bill is requesting is reasonable and that we should pass it and not approve to go along with the way things are. The way things are, in my opinion, leaves too much room for people to manipulate the positions and the salaries of individuals working for this state. I will vote against this. I think that you are making a mistake to continue the process that is in place. I think that we should, once again, as elected officials, get a handle on what is going on in salaries in this state. I think that is important that we have that knowledge. Now we may agree with it, when it is all said and done, but we should at least have the review, ability and to make an appropriate evaluation as a legislature, not turning it over to the bureaucratic structure. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the motion. With the greatest of respect for my colleague, Senator Green, we both came to the legislature at the same time. I moved to the Executive Council and was responsible for the creation of the salary structure. Jim Hayes, myself and Bernie Streeter were three Executive Councilors who were given the task of adjusting the state unclassified schedule in light of the fact that some things had taken place in state government. The warden at the state prison no longer had housing at the prison. That was withdrawn because of the fact that, by statute, he had to live there; by virtue of changes, he did not have to live there. A compensating factor had to be made in the salary. So we looked at the salary structure. We did that in 1975. I was again part of the committee that looked at the salary structure when we brought in an outside entity. By the way, it was the legislature's request that we do this. We went through the entire summer with a person from the outside who examined the unclassified system, and we avoided what had happened in the past where, by fiat, this legislature had chosen certain people. For example, six in one budget, to get a particular raise, where the rest of the state didn't. So we tried to avoid that and we will avoid that. We used outside counsel. We paid them \$150,000 because we thought that experts deserved the opportunity to look at the system, evaluate the system and bring us something that we as legislators could digest. There were members of the House, members of the Senate on that committee. Don Hill participated in that committee. We brought in people to testify. I think that the salary structure that we put in place is a good one. Certainly it will require modifications as we move forward. Those modifications can be made in a timely manner. But we spent a lot of money to do the right thing because we saw what had happened in the past and we didn't want that replicated. This is something that we do not need. This is a process that we now have in place. It is a good process. I think it is fair. I think it is equitable, and I don't think anybody can memorize the salary of every state employee. We have 5,000 in the classified. We have many in the unclassified. But you can go to a particular place and you can look up the salary of every one of those employees. I think we did a good job, a commendable job, and it did come about as part of the budget. Absolutely. Because it needed to be done. That is where things get done. Thank you, Mr. President.

SENATOR GREEN: Senator, good morning. We are only talking here about unclassified employees, so we don't have to worry about the classified issues. Those are bargained.

SENATOR D'ALLESANDRO: That is correct.

SENATOR GREEN: Alright. Thank you. Do these people who are making this decision, making these recommendations, are they elected people?

SENATOR D'ALLESANDRO: Yes.

SENATOR GREEN: Who is elected?

SENATOR D'ALLESANDRO: I was elected.

SENATOR GREEN: I am talking about now. I am talking about the unclassified salaries now. Are the people who are making decisions on the unclassified salaries elected officials?

SENATOR D'ALLESANDRO: The unclassified structure is in place now. We created grades. People are in those grades. If we wanted to make a modification to that, we could legislatively do it, or we have step increases

within those alphabet structure in order to handle that. We also have the recruitment and retention statute, whereby if a person is receiving less than an subordinate, by virtue of the Governor and Council, under the recruitment and retention statute, you can make that change to make that equitable.

SENATOR GREEN: I guess I hear what you said, and I respect your answer, but I am still trying to get at the answer. The answer is...the question is, the people who are making the decisions on unclassified salaries, are they elected officials?

SENATOR D'ALLESANDRO: Again, Senator, I want to make it clear. When the decision was made, it was made by elected officials based on the material that was brought to us by the consultant.

SENATOR GREEN: Thank you.

Committee report of inexpedient to legislate is adopted.

HB 499, relative to participation in and administration of the Manchester employees' contributory retirement system. Banks and Insurance Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 499 ought to pass. This is a housekeeping measure that clarifies that the Manchester school district, public library, and contributory retirement system are considered city employees. The Banks and Insurance Committee asks your support on the motion of ought to pass. Thank you very much.

Adopted.

Ordered to third reading.

HB 521, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system. Banks and Insurance Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 521 ought to pass. This would enable the city of Manchester to place this referendum on their ballot. There is no fiscal impact to the state and it would allow the voters to decide on this issue. The Banks and Insurance Committee recommends ought to pass. Thank you.

Adopted.

Ordered to third reading.

Senator Gatsas rule #42 on HB 521.

HB 546, relative to the status of the board of trustees of the retirement system. Banks and Insurance Committee. Ought to pass, Vote 4-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move that House Bill 546 ought to pass. During the recent audit at the retirement system, it was found that an error was made in 1991 when some of these statutes were last reworked. You will notice that line three and four were added. These are some wording that was left out of the statute back at that time and this is a correction to put it back in per the audit. The Banks and Insurance Committee asks for your support on the motion of ought to pass. Thank you.

SENATOR GOTTESMAN: Senator Flanders, as I recall, the testimony was that, in the event that somebody who is on the board of trustees committed gross negligence or malfeasance, that this wouldn't preclude action against them.

SENATOR FLANDERS: That is correct.

SENATOR GOTTESMAN: Thank you.

Adopted.

Ordered to third reading.

HB 447-FN, relative to black bear license and tag fees. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gallus for the committee.

Environment and Wildlife

April 20, 2005

2005-1210s

10/04

Amendment to HB 447-FN

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect January 1, 2006.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 447 ought to pass with amendment. House Bill 447 increases a license fee to hunt bear under the bear management program. The bill also clarifies the use of the funds in the bear management fund. The cost of the bear management program has been rising as we see an increase in the need for assistance with nuisance bears and requests for information and data. The current fee for taking bears is quite low. Even with the increase, New Hampshire fees will remain well below those of other states. The committee amendment will move the effective date to January 1, 2006 at the request of the Department. The Environment and Wildlife Committee asks you to support the motion of ought to pass with amendment and we thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 449-FN, relative to special wild turkey seasons and permits. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 449 ought to pass. House Bill 449 allows the executive director of Fish and Game to establish a wild turkey hunting season. The turkey population can support an extra season some years and the Department would...by God, I've got music with my...The turkey population can support an extra season some years and the Department would like to give hunters this opportunity when possible. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you very much. I have never had music accompany my blurb.

Adopted.

Ordered to third reading.

HB 114, relative to the regulation of pharmacists and pharmacy technicians by the pharmacy board. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move House Bill 114 ought to pass. This is another housekeeping bill put in by the Board of Pharmacy. There are a few clarifications, definitions and additions that they have made. They also have removed some drugs that are already controlled and classified by the DEA. The ED and A Committee asks your support on the motion of ought to pass. Thank you.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

Sen. Martel, Dist. 18

April 28, 2005

2005-1286s

01/09

Floor Amendment to HB 114

Amend the title of the bill by replacing it with the following:

AN ACT relative to the regulation of pharmacists and pharmacy technicians by the pharmacy board and establishing the New Hampshire Rx plus program for prescription drugs.

Amend the bill by replacing all after section 13 with the following:

14 Statement of Purpose. The general court recognizes that New Hampshire's lower-income uninsured residents pay too much for prescription medication. The general court recognizes that it is difficult or impossible for lower-income residents who do not have insurance to pay for medications and that this results in poorer health, higher medical costs, and increased reliance on medicaid. Therefore, to reduce current and future medicaid expenditures and improve the health of New Hampshire's population, the general court hereby creates the New Hampshire Rx plus program which will allow lower-income uninsured persons the opportunity to buy prescription drugs at discount prices.

15 New Chapter; New Hampshire Rx Plus Program for Prescription Drugs. Amend RSA by inserting after chapter 161-J the following new chapter:

CHAPTER 161-K

NEW HAMPSHIRE RX PLUS PROGRAM

161-K:1 Definitions. In this chapter:

I. "Commissioner" means the commissioner of the department of health and human services.

II. "Department" means the department of health and human services.

161-K:2 New Hampshire Rx Plus Program Established. The department shall establish the New Hampshire Rx plus program for prescription drugs. The New Hampshire Rx plus program shall be available to individuals and families with incomes of not more than 350 percent of the federal poverty level that either lack insurance coverage for prescription medications or that have reached the limits of their prescription medication insurance coverage. Benefits shall include the right to purchase prescription medications included on the medicaid preferred drug list from participating pharmacies at average wholesale prices less 10 percent. The department shall negotiate medicaid level or greater re-

bates with manufacturers for all products available to Rx plus beneficiaries. Rx plus discount prices shall be based on average wholesale price (AWP) less 10 percent and medicaid level or greater rebates voluntarily received from manufacturers on prescription medications purchased by Rx plus beneficiaries less dispensing fees and the department's administrative costs relating to Rx plus. If the department contracts with a commercial organization to manage the Rx plus rebate negotiations, the contract shall provide that the organization shall not retain rebate moneys.

161-K:3 Rx Plus Fund Established. There is hereby established in the office of the state treasurer a fund to be known as the Rx plus fund. All payments of discounts received by the department as a result of purchases by Rx plus beneficiaries, appropriations to the fund, and interest on the fund shall be deposited in the fund. Moneys in this fund shall be nonlapsing and continually appropriated to the department and may be expended on administrative costs, including contracted services, and reimbursement for pharmacist dispensing fees relating to the Rx plus program and to lower the discount prices available to Rx plus beneficiaries. The department may also reserve moneys in the fund to limit fluctuations in discount prices.

161-K:4 Contracts. The department may enter into contracts relating to this chapter, including contracts relating to program outreach, eligibility determinations, including self-declaration of income as a cost-saving measure, administration, and price and discount negotiations, and recovery. No such contracts shall permit a contractor to receive compensation or other benefit from any pharmaceutical industry entity unless the terms of such compensation or benefits and potential conflicts of interest are disclosed to the department. Such contracts shall guarantee patient confidentiality as to any records shared between the department, contractors, drug industry entities, and pharmacies.

161-K:5 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

I. The application process.

II. Rx plus discount prices pursuant to RSA 161-K:2.

III. The administration of the Rx plus fund established in RSA 161-K:3.

IV. The contracting process, including confidentiality procedures, under RSA 161-K:4.

16 New Subparagraph; Rx plus Fund. Amend RSA 6:12, I by inserting after subparagraph (234) the following new subparagraph:

(235) Moneys deposited in the Rx plus fund pursuant to RSA 161-K:3.

17 Effective Date. This act shall take effect 60 days after its passage.

2005-1286s

AMENDED ANALYSIS

This bill makes various changes to the regulation by the pharmacy board of pharmacists, pharmacy technicians, and the issuing of prescriptions.

This bill also establishes the New Hampshire Rx plus program for prescription drugs. Under this bill, individuals and families with incomes of not more than 350 percent of the federal poverty level that lack insurance coverage or that have reached the limits of their insurance coverage would be eligible for the program. The bill grants rulemaking authority to the commissioner of the department of health and human services for the purposes of the program.

SENATOR LARSEN: Thank you, Mr. President. I rise to offer floor amendment 1286 to House Bill 114. As the bill...or the amendment is being distributed, I would ask that the full Senate consider the fact that we passed a prescription drug discount program through the Senate by unanimous motion not so long ago. As we worked with the House through this, there was a great deal of support for creating a discount program for those who are insured...who are uninsured in New Hampshire who have incomes of less than 350 percent of poverty. The amendment as you are seeing it is almost precisely as the Senate passed it. There have been some additional language added at the request of the independent pharmacists so that they would feel more comfortable participating in the discount program. At the request of the House, as we worked through this bill, they wanted to see the participating...they wanted to hear that the pharmacists of this state would participate, so as we worked through that, we created a...we made calls to Brooks, Hannaford, Rite-Aid and Wal-Mart Pharmacies' directors in the Northeast and asked them if they would participate in this program. Thirty-nine states in the United States have discount programs. Our program is very much modeled on the Hawaii program which has a high level of participation, even in its first year. It has proved to be a workable program, and one which helps to bring more affordable prescriptions to those who are most in need, the uninsured and those ages 18-64, who are uninsured and currently paying 100 percent of pharmacy prices. This only brings them at 10 percent discount to begin with, but it does begin to bring down some of the costs. Those are the people who are paying 100 percent of retail price. As you approach a pharmacist to fill a prescription, most of us who have our own health insurance through one way or another, have negotiated discounts. This is the group that most needs it that has no discounts at all. We created this map for the House committee. It shows, through the distribution patterns of pharmacies across the state, an amazing network of availability of a discount because these pharmacists have said that they would be willing to look at New Hampshire's program and participate. They obviously haven't signed up because there is nothing to sign up for yet, but as we described the program to them, they all said this is a great idea. This is the very population that needs it, and we are willing to offer a 10 percent discount to start and will work on bringing that discount lower as we develop the program. The Department of Health and Human Services has worked on this language with us, as have all the chain pharmacies and the independents. So I urge you to once again, make a statement from the Senate that we believe it is time that New Hampshire join the more than 39 states that have a discount program for those most in need in this state. The AARP has been very active in supporting this. I am sure that the House, the full House, will want to join us in doing this program, and we encourage you to vote for amendment 1286. Thank you very much.

SENATOR FLANDERS: Thank you, Mr. President. I was reading recently about Merck in a big program that Merck just came out with. Do we need this legislation to take advantage of the discounts they are offering as a company?

SENATOR LARSEN: Merck would probably be one of those on the list who would offer a discount through this program. Merck has its own program, but under that scenario, every individual senior would have to apply to Merck directly. Then if they were to take a Pfizer Program, they might

have to apply through them. There is a Together RX program but this would be a state negotiated rebate and discount program that would, in effect, enable us to bring greater discounts to our own residents.

SENATOR FLANDERS: Thank you.

SENATOR MARTEL: Thank you very much, Mr. President. I rise in full support of this amendment to be added onto House Bill 114. I want to thank Senator Larsen for adding me to this amendment, and to make this a fine bipartisan effort to make sure that we bring these pharmaceutical discount programs to the entire state. What is important about this is that ever since we began the adventure of this bill with 110, many of the pharmaceutical houses across from outside the state have participated or began to participate in bringing together other programs, okay, in which they are personally asking people to sign up for. This is above and beyond those programs. These other programs are fine, but this gives the customer and the person who needs it the most, the 350 percent of poverty, the opportunity to get 10 percent break off the average wholesale price. This is not based on retail, it is based on wholesale, which gives them a discount. Now, as this legislation goes forward, it does have a small attachment at the beginning, but over time this bill funds itself and will bring...and we can offer larger discounts as time goes by. As Senator Larsen mentioned, this is totally supported by the AARP and many other organizations that got together, okay, in full support behind this bill, and also on this amendment. So I urge you all to please pass this, 114 as amended, adding this amendment to it and it is a fine move to help people in New Hampshire who need it the most. Thank you very much, Mr. President.

SENATOR JOHNSON: Thank you. I have a question for Senator Larsen. Senator Larsen, how would this affect the small independent pharmacy?

SENATOR LARSEN: We added language on the request of the independent pharmacies. They had indicated that they would like to have greater clarity on the reimbursement back for some of the reimbursement for pharmacists' dispensing fees. So we have taken their requested language and included it in this amendment. That is what I mentioned is slightly different. The independent pharmacists have not opposed this bill, but they have been watching it, and I believe they want to participate. Whether they will jump right in, in the first year or watch it for a year, I don't know. As I say, we have the commitments from some of the others, but we did want to make sure that we were being fair to the independent pharmacists, because I think a lot of us believe that you get good advice from some of those folks. So we tried to include their requested language in it as well. As you know, once we get into Conference Committee, there will be a lot of input from them as well as others. We have tried to be sensitive to their concerns as well.

SENATOR JOHNSON: Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 420, relative to receiving and addressing complaints against licensees by the board of mental health practice. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 420 ought to pass. This legislation addresses an observation from the audit done on the Board of Mental Health Practice, specifically receiving and addressing complaints against licensees by the board. It would give an assigned supervisor to discipline licensee civil immunity. It also outlines requirements for recusal and replacement of the board members during investigation proceedings where certain board members may have a personal interest which may prevent them from being impartial. Additionally, renewal notices shall be mailed at two months in advance of the date of expiration of such license. The ED and A Committee asks for your support on the motion of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

Senator Foster rule #42 on HB 420.

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 5-0. Senator Hassan for the committee.

Senate Executive Departments and Administration

April 20, 2005

2005-1214s

01/10

Amendment to HB 481

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the president of the senate.

II. The committee shall solicit information from any other source the committee deems relevant.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1. The committee shall also examine the issue of federal reimbursement for the secure psychiatric unit.

4 Chairperson. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

2005-1214s

AMENDED ANALYSIS

This bill establishes a committee to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 481 ought to pass with amendment. This bill would establish a study committee to study the feasibility of moving those who are civilly committed and qualified to be moved out of corrections and into an environment better suited to treat them. Currently, the state is unable to collect federal Medicaid reimbursement for these individuals since they are under the Corrections Department, so moving them into a separate environment would allow the state to recover Medicaid dollars. Please join the ED and A Committee and support the motion of ought to pass with amendment.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 532, relative to the licensure of dentists by the board of dental examiners. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 532 ought to pass. This legislation will bring the practice of dentistry into the twenty-first century. It would also allow for the temporary licenses for voluntary services such as retired dentists or hygienists. The ED and A Committee asks for your support on the motion of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor. Finance Committee. Ought to pass, Vote 6-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 71 ought to pass. This legislation appropriates \$2.7 million for the shortfall in 2005 in school building aid. As a reimbursed expense, we all know how hard it is and it is difficult to anticipate new projects and aid amounts for schools in the second year of the biennium at the time the budget is submitted. Given that difficulty, this situation has happened sixteen times where we have had a shortfall since the School Building Aid Program was created in 1955. In 2003, there were several large projects approved by districts late or at special meetings after our budget was passed. I think that it is wonderful that this body continues to hold its commitment to school building aid at 100 percent and I hope that you will join the Finance Committee's recommendation of ought to pass for fully funding building aid for school districts once again. Thank you, Mr. President.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Kenney.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

HB 56, relative to food safety in restaurants. Health and Human Services Committee. Inexpedient to legislate, Vote 3-1. Senator Gallus for the committee.

MOTION TO TABLE

Senator Gallus moved to have HB 56 laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Fuller Clark.

Seconded by Senator Estabrook.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Adopted.

LAI D ON THE TABLE

HB 56, relative to food safety in restaurants.

HB 472, relative to the definition of recreational program. Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Martel for the committee.

Health and Human Services

April 21, 2005

2005-1219s

05/01

Amendment to HB 472

Amend RSA 170-E:2, XI-a (b) as inserted by section 1 of the bill by replacing it with the following:

(b) A school or religious group, the Boys and Girls Clubs of America, Girls, Incorporated, the YMCA, or the YWCA, provided that the program does not operate in a private home, notifies parents or guardians that the program is not subject to licensure under RSA 170-E:4, has policies and procedures to address the filing of grievances by parents and guardians, and is a member in good standing and in compliance with the national organization's minimum standards and procedures.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 472 ought to pass with amendment. The law as it exists today is inconsistent. While one section of the law offers an exception to child daycare licensing rules for certain recreational programs, no definition of recreational program exists in the statutes. House Bill 472 establishes a definition for recreational programs and clarifies the exemptions in current law. The committee adopted an amendment that changes the word "church" to religious. The committee recommends ought to pass with amendment of House Bill 472, and I thank you, Mr. President.

SENATOR MORSE: I have a question of Senator Martel. Senator Martel, I need you to refresh my memory. We dealt with this last year and Boys and Girls Clubs come under G. Does this do anything to them when it comes to the kindergarten end of what they do?

SENATOR MARTEL: No. It has no impact on that.

SENATOR MORSE. Okay. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 32, establishing a committee to study the feasibility of implementing the Second Chance drug rehabilitation program in the New Hampshire prison system. Internal Affairs Committee. Inexpedient to legislate, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 32 be found inexpedient to legislate. House Bill 32 would create a committee to study the possibility of using the Second Chance Drug Rehabilitation Program in the New Hampshire Prison System. The committee acknowledges and supports the desire to rehabilitate prisoners and reduce recidivism rates. However, we do not need to endorse a specific program in legislation, nor do we need to pass this legislation in order for the prison to implement such a program. The prison system is free to implement this program if they wish and they do not require any legislation to do so. The Internal Affairs Committee asks your support for the motion of inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 144-L, relative to special elections for municipal charter amendments. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 144 ought to pass. House Bill 144 allows towns to extend the timeframe for putting charter amendments on the ballot. This will help to avoid the expense of unnecessary special elections, although towns will still have the option of a special election if they find it necessary. The bill is simply intended to give towns more flexibility on charter amendments. The Internal Affairs Committee asks your support for the unanimous motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 382, establishing a committee to develop a strategic capital plan for department of corrections' facilities. Internal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Hassan for the committee.

Internal Affairs

April 21, 2005

2005-1222s

09/10

Amendment to HB 382

Amend the bill by replacing all after the enacting clause with the following:

I New Section; Department of Corrections; Strategic Capital Plan Committee. Amend RSA 21-H by inserting after section 14 the following new section:

21-H:14-a Strategic Capital Plan Committee.

I. There is established a committee to develop a strategic capital plan for department of corrections' facilities.

II.(a) The members of the committee shall be seven members of the house of representatives, at least one of whom shall be a member of the criminal justice and public safety committee, at least one of whom shall be a member of the public works and highways committee, and at least one of whom shall be a member of the finance committee, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee. The terms of members of the committee shall be coterminous with their terms of office as members of the house of representatives.

III. The committee shall develop a strategic capital plan for all department of corrections' facilities. The committee's duties shall include, but not be limited to, considering:

(a) The suitability of current structures and facilities used by the state for incarceration and rehabilitation of offenders.

(b) Acquiring a suitable site for a women's prison or a new prison complex. Such a complex would involve the centralization of resources and maximize efficiency in the coordination of services to women inmates. The committee should also consider the demographics of Goffstown's older population in particular and the lack of bed space. The committee should decide whether to provide the opportunity to partner with the counties and the federal government to accept their inmates in any new women's prison facility.

(c) Consolidation of certain facilities to create a more efficient delivery of services.

(d) Whether the secure psychiatric unit should continue to be a part of the department of corrections' responsibilities.

(e) The addition of 500 beds in the northern correctional facility and what effect that might have on the corrections system.

(f) Whether the department of corrections should enter into a contract to house offenders from other states.

IV. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

V. The committee shall make reports on or before November 1 of each year beginning with November 1, 2005 of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the house clerk, the governor, and the state library.

2 Repeal. RSA 21-H:14-a, relative to the strategic capital plan committee, is repealed.

3 Effective Date.

I. Section 2 of this act shall take effect November 1, 2011.

II. The remainder of this act shall take effect upon its passage.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 382 ought to pass with amendment. House Bill 382 establishes a committee to develop a long term plan for the Department of Corrections. There is a great deal of disparity in the infrastructure of our prison system. Older facilities create security problems and the women's facility is woefully inadequate. The new facility in Berlin is excellent, but it cannot cover all of our needs. We need to look at the system as a whole and have a group with enough knowledge and foresight to make long term planning and policy recommendations. The committee amendment will make the membership a group of seven House members and will reduce the length of the study to six years. And, Mr. President, I also have a floor amendment that I will speak to after this issue, concerning membership of the committee. This is still a long time frame for a study committee, the six year time period. We heard compelling evidence for a truly long term study. As the prime sponsor noted in his testimony, good facilities are always cheaper to run. The Internal Affairs Committee asks your support for the motion of ought to pass with amendment. Thank you.

Amendment adopted.

Senator Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

April 28, 2005

2005-1284s

10/01

Floor Amendment to HB 382

Amend RSA 21-H:14-a, II as inserted by section 1 of the bill by replacing it with the following:

II.(a) The members of the committee shall be as follows:

(1) Five members of the house of representatives, at least one of whom shall be a member of the criminal justice and public safety committee, at least one of whom shall be a member of the public works and highways committee, and at least one of whom shall be a member of the finance committee, appointed by the speaker of the house of representatives.

(2) Two members of the senate, appointed by the president of the senate.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee. The terms of members of the committee shall be coterminous with their terms of office.

Amend RSA 21-H:14-a, IV and V as inserted by section 1 of the bill by replacing them with the following:

IV. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

V. The committee shall make reports on or before November 1 of each year beginning with November 1, 2005 of its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library.

SENATOR HASSAN: Mr. President, I move a floor amendment to House Bill 382. I would love to speak to it. I don't have the number in front of me yet, but...1284. The floor amendment would simply add two members of the Senate to this long term study committee. We have two members of the Senate who have volunteered to do that. Thank you, Mr. President.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 46-FN, relative to penalties for first-time DWI offenders. Judiciary Committee. Inexpedient to legislate, Vote 5-0. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 46 inexpedient to legislate. The bill proposed to mandate that a first time driving under the influence conviction be reduced to violation for certain behavior rather than leaving it in the discretion of the court as the law provides now. The law, amended last spring, has not yet been on the books for one year. The committee felt it was important to give the statute time to see it if is working. Until we know there is a problem, there seemed to be no reason to change the law. The Judiciary Committee respectfully requests that you support our recommendation. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. I rise to compliment the committee, Mr. Chairman and the rest of the committee that voted on this. I agree very much so with what Senator Clegg has just said, and bring to your attention that we just had another DWI last weekend that killed an innocent person. So, I don't think it is time to back off. I think it is time to continue the way we are. Thank you very much committee for doing what you did.

Committee report of inexpedient to legislate is adopted.

HB 112, relative to psychiatric evaluations in competency hearings. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

Senate Judiciary

April 19, 2005

2005-1197s

09/01

Amendment to HB 112

Amend RSA 135-C:17-a, VI as inserted by section 2 of the bill by replacing it with the following:

VI. If the person is ordered to be involuntarily committed following proceedings pursuant to RSA 135-C or RSA 171-B, the court may, upon motion of the attorney general or county attorney at any time during the

period of the involuntary commitment and before expiration of the limitations period applicable to the underlying criminal offense, order a further competency evaluation, to be conducted as prescribed in paragraph III. Such further competency evaluations may be ordered if the court finds that there is a reasonable basis to believe that the person's condition has changed such that competency to stand trial may have been affected. During proceedings authorized by this paragraph, the person is entitled to the assistance of counsel, including appointed counsel under RSA 135-C:22.

SENATOR FOSTER: Thank you, Mr. President. I move House Bill 112 ought to pass with amendment. The legislation was filed at the request of the Attorney General's Office in response to a recent state Supreme Court ruling. The bill deals with those who have been found incompetent to stand trial and, following treatment, their competency has been restored. It permits a different psychiatrist to make the determination which addresses the court case. The bill also allows a re-evaluation of the patient. Currently, the treating physician must notify law enforcement, which the psychiatrist felt was a conflict of interest. The amendment permits re-evaluation only upon a court finding that there is cause to believe the condition has changed. The Judiciary Committee asks your support for the bill with amendment. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 147, relative to the death penalty. Judiciary Committee. Ought to pass, Vote 4-1. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 147 ought to pass. The legislation provides that no person who is under the age of 18 at the time an offense was committed, shall be culpable of capital murder. The bill was filed prior to the recent U.S. Supreme Court ruling, finding laws that provide otherwise as unconstitutional. The adoption of this bill makes our statutes consistent with the law of the land. The Judiciary Committee asks for your support of ought to pass motion. Thank you.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Letourneau.

The following Senators voted Yes: Gallus, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 16 - Nays: 8

Adopted.

Ordered to third reading.

HB 280, relative to the manner of service in divorce and child custody proceedings. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary
April 20, 2005
2005-1208s
09/01

Amendment to HB 280

Amend the bill by replacing section 2 with the following:

2 Effective Date. This act shall take effect July 1, 2005.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 280 ought to pass with amendment. This legislation allows the court to return to permitting those being served in divorce or child custody proceedings to pick up the documents at the court. The courts were doing this prior to a statute that was adopted last year. In order to return to this less threatening method of service, the court would like this bill adopted. The Judiciary Committee agrees and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 299, establishing a committee to study state laws governing liens for labor and materials. Judiciary Committee. Ought to pass, Vote 5-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move House Bill 299 ought to pass. The legislation establishes a much needed committee to study the laws relative to liens for labor and materials or what are generally referred to as "mechanic liens". Our statutes, while amended from time to time, are out-of-date, have a number of inconsistencies and leave many unanswered questions, which leads to prolonged and unnecessary litigation. Some recent decisions by the New Hampshire Supreme Court emphasize the need to review these statutes and hopefully modernize them. The committee asks your support of ought to pass. Thank you.

Adopted.

Ordered to third reading.

SENATOR GATSAS: Mr. President, do you have volunteers for that one, too?

SENATOR EATON (In the Chair): We're going to.

SENATOR GATSAS: Thank you.

SENATOR EATON (In the Chair): Are you volunteering, Senator Gatsas?

SENATOR GATSAS: No.

SENATOR EATON (In the Chair): For the permanent record, he was only kidding.

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Roberge for the committee.

MOTION TO TABLE

Senator Roberge moved to have HB 239-FN laid on the table.

Adopted.

LAID ON THE TABLE

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics.

HB 265, relative to minutes of land use board meetings involving developments of regional impact. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 265 ought to pass. House Bill 265 increases the amount of time following a decision on a development that has regional impact before a land use board is required to provide plans and minutes to the regional planning commission and other affected communities. This bill was submitted on behalf of the Municipal Association and increases the deadline for mailing out the minutes of the planning board meeting to impacted communities from 72 hours to 144 hours, which is the requirement for most other minute reporting deadlines. The Public and Municipal Affairs Committee unanimously recommends a vote of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HCR 11, establishing joint rules for committees of conference for the 2005 and 2006 sessions of the New Hampshire general court. Rules and Enrolled Bills Committee. Ought to pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Concurrent Resolution 11 ought to pass. This resolution establishes joint rules for Committees of Conference. Currently, the Senate and the House each have their own set of slightly different rules. However, those rules are not binding on the other body. By passing this resolution, all members of a Committee of Conference will be working from one set of rules. Normally, the Senate does not get involved in how the House conducts its business and vice versa. However, Committees of Conference are a unique situation. Having rules that apply equally to everyone makes sense. Since these are joint rules that are adopted by both bodies, they cannot be changed by one body without the consent of the other. This resolution was written to encompass the existing rules that each body has already adopted. There are some slight wording changes to blend the two together. The only new parts are sections H and I. These sections reflect long standing legislative practice that was not previously stated in either set of rules. As a final note, since one legislature cannot bind a future legislature, these rules apply only to the 2005-2006 session. The next legislature will have to decide what rules, if any, they wish to adopt for future Committees of Conference. Thank you.

SENATOR GREEN: Thank you, Mr. President. I rise today basically for two reasons. One is on principle, and secondly, I think the public out here ought to know what they are doing in these joint rules. I understand the practicality of conference committees deciding what they are going to approve. But, my problem is, the question of whether or not we know what we are really doing here. There is a lawsuit that is currently pending as you know, that is a "Hughes Case." Many of you know about the case. It has to do with the right-to-know law. It also has to do with the Constitution. I am bothered because, when I read the case law on this, and the arguments that are made by both parties, but the arguments made in favor of the legislature, in this case, just the Senate, let's just

talk the Senate please, says that we can pass laws and we can know what the Constitution says, but we can exempt ourselves from those laws. That is the argument. I don't happen to agree with that argument. Let me read some of the comments from the conclusion of law, which I think are relevant to this discussion, and I would say relevant to the issues H and I in this joint rules. In "H" it basically says, "that any convening of more than one half of the members of a Committee of Conference that includes at least one member of the House and one member of the Senate, shall be open to the public and all persons shall be permitted to attend." I happen to agree with that. However, "I" says, "the convening of the House members of Conference Committee and the Senate members of the Conference Committee, is not subject to the open meeting requirements contained." In other words, we are voting to meet in private while we are considering statute and law, and exempting ourselves from the public to know what we are doing. I don't agree with that. Under the conclusions of law in the Hughes case, let me just read some of the conclusions that the judge made and granted. It said that she agreed with these findings, and the agreements made by the plaintiffs. Finding number 33 if somebody wants to do their own reference on this. The House Conference Committee and the Senate Conference Committee on Senate Bill 302., now I am talking about Senate Bill 302 which was the education funding statute that was approved, or I should say, was passed in some form, to create a law for school funding last time. The House Conference Committee and the Senate Conference Committee on Senate Bill 302 violated the notice and open meeting requirements under RSA 91-A:2 on multiple occasions over a period of May 17th and the 19th, 2004. The court found that that was in fact true. Number 34, "The House Conference Committee and the Senate Conference Committee on Senate Bill 302 violated Part I, Article 8 of the New Hampshire Constitution on multiple occasions over the period of May 17th through 19th by, among other things, violating the notice of open meetings required by the law, representing to the public, through posted notices that the committee would meet at specific times in room 103 to negotiate the Committee of Conference Report while intending to conduct negotiations behind close doors." I think that if the public doesn't care about us doing things behind close doors, fine. Why do we have rules? Why do we have laws? Why do we have a constitution? Also, scripting discussions at joint meetings of the two committees to maintain the illusion that those meetings were substantive in nature. Not a very good reputation for this body, I don't believe. Ruling number 35. Again, ruled in favor of the plaintiff. "The purpose of the Part I, Article 8 of the New Hampshire Constitution is to render the offices of government", that's us, "accountable to the people". New Hampshire Constitution Part A. Part I, Article A, "The conduct of the House and Senate Committees of Conference on Senate Bill 302 was intended", pretty strong word, "to circumvent public accountability for those negotiating the content of legislation affecting every city and town in New Hampshire." Is that what we want to be known for? I wasn't elected to be put in a position of defending, intending to circumvent public accountability. I don't think any of you were either. I don't believe that you really believe that that is how we should be doing business in this body. Section 38: "In this case, the House and Senate Conference Committees, knowingly and purposely, acted to avoid scrutiny by the public. Other legislators," that's us, keeping us in the dark. I want you to know I sat out in the corridor for hours waiting for these people to come in and give us, not only the wording, but the spreadsheets. And

there were people in this room here, who did the same. So they “knowingly and purposely acted to avoid scrutiny by the public, other legislators, and the media, for the negotiations of legislation having a substantial financial impact on every community in New Hampshire.” Number 39: “Respondents have sought to justify their evasion of the requirements of RSA 91-A and Part I, Article 8 of the New Hampshire Constitution with the argument that nonpublic meetings of legislators are most essential when dealing with controversial legislation. The court rejects this argument. It is when the legislature is debating and formulating legislation that it is controversial and will affect nearly all New Hampshire citizens, that the requirement of accountability takes on its greatest importance.” You know, we also passed a law last session that exempted us from the right-to-know law to have a caucus. I believe the party should have a right to have a caucus. I don’t have a problem with that. What I do have a problem with is that when we go into a caucus and we are expected to vote out of the public eye, and then come in here and act like we are voting for the first time. That is not what the public elected us to do. To make a vote in private. Make a decision and agreement in private, and then come out here, and act like we all of a sudden, for the first time, we have made our decision, when the decision has been made beforehand. I don’t think that is what we should be excluding ourselves from. “The New Hampshire Constitution presumes that the outcome of governmental proceedings is most representative of the will of the governed when those proceedings are open, accessible, accountable and responsive.” “RSA 91-A” which, by the way we’ve tried to exclude ourselves from both in the judicial process and now we are trying to do it again in joint rules. “was enacted and further into the constitutional requirement that the public’s right to access the governmental proceedings and records shall not be unreasonably restricted.” RSA 91-A:2 requires that all public proceedings be open to the public. RSA 91-A defines public proceedings as a transaction of any function affecting any or all of the citizens of the state by, among others, legislative committees. It definitely defines legislative committees. “The negotiation of Committee of Conference Report on 302 was a public proceeding as defined by RSA 91-A:a.” Now we are going to go on record today, if you pass these joint rules, that we do not have to follow the state law. We are going to ignore the Constitution, and we are going to expect every other publicly elected official in this state to follow the law, and we are different, because we make the laws and we don’t have to follow them! Well I am not voting for something like that! I am not sending that message! I got elected to follow the law and I am going to do that to the best of my ability. I am not going to be bullied into thinking it is okay to do something different. Now you vote whatever way you want. But I am telling you, the people out here who are listening to this are going to wonder why you think you have the right or the egotistical ability to violate a law that you have passed through due process and violate a Constitution which makes it clear that our business should be in public. Whatever way this goes, that’s fine. But I am going to call for a roll call, Mr. President. I think the public ought to know what this body and this legislature is doing, to excuse itself from the public’s right-to-know. Thank you.

SENATOR BARNES: Thank you, Mr. President. A question of the person who brought this out. Was it you, Senator Foster or was it Senator Gottesman?

SENATOR EATON (In the Chair): Senator Gottesman.

SENATOR BARNES: Senator Gottesman, you obviously sat on the committee that heard this. Were there House members there? Was there any conversation with the House?

SENATOR GOTTESMAN: I don't recall there being any House members at the meeting. I do recall, I think, Senator Larsen was there, and I think, if I am not mistaken, Senator Green was there and neither of them spoke at the time.

SENATOR BARNES: Senator Green was there?

SENATOR GOTTESMAN: I believe he was.

SENATOR BARNES: Thank you very...but nothing was said at that time?

SENATOR GOTTESMAN: Nothing was said.

SENATOR BARNES: Thank you, Senator.

SENATOR LARSEN: I simply rise to express similar concerns to Senator Green. I guess each one of us knows the importance of the public's right-to-know. And, as we leave this chamber, we need to know that we are leaving it with the best precedence possible, that we are upholding the right of the public to see our negotiations, our deliberations and how we arrive at decisions that affect so much of the public. I guess I would just say that these used to be called "sunshine laws", and the importance we know of sunshine in acting as a disinfectant and may the sun come out soon. Thanks.

SENATOR BRAGDON: Thank you, Mr. President. Senator Green, I am trying to get a feel for what the intent is. I understand your point about the different House and Senate groups meeting, but you also said you were fine with the part of the law that talked about if its more than half of the committee. If the Senate members, which I believe it's four House members and three Senate members most of the time. If the Senate members choose to meet, what is your feeling as to how that should be addressed? I am not clear based on your comments.

SENATOR GREEN: I think that, again, it depends how you define, and again, I only go to what the language is in the statute and what the court findings are, it depends on what you define is an "open meeting" in terms of posting it and what the business that is going to be conducted in that meeting and whether or not you have a quorum.

SENATOR BRAGDON: I guess, in that case, a quorum, a Committee of Conference is seven members, so a quorum of the Committee of Conference is four. If the Senate part of the Committee of Conference wants to meet, I am unclear as to whether then your feeling is if two of them are together that is a quorum or does it still need four people? I am not clear.

SENATOR GREEN: Well, if it is a three member committee, two makes a quorum. The way the rule is written, it's for three members. I think the rules can be written any way for any number of members to make sure that individuals can talk to themselves without being concerned with a quorum. I just think that the way they have it set up here is that you put yourself in that box. You don't have to put yourself in that box. I think there is no problem with individual Senators discussing this among themselves. But I do think, if it is a formal committee formed by this body to do state business, they should be posted and they should be public. I think, if you have a problem with that, make sure you make the size of the committee large enough so that a quorum issue does not become an issue with Senators talking to each other.

SENATOR BRAGDON: I am still not clear. Three members of the Senate are on a Conference Committee, they want to get together. In your opinion, should they...

SENATOR GREEN: They should meet in public.

SENATOR BRAGDON: Okay.

SENATOR GREEN: Under that scenario, they should be in public.

SENATOR BRAGDON: Thank you very much.

SENATOR GREEN: You're welcome.

SENATOR CLEGG: Thank you, Mr. President. First off, I would like to remind people that there is two cases on that education bill, and the one that has actually been to the Supreme Court, the Supreme Court ruled that the bill in the process was constitutional. It is not unconstitutional. It was constitutional and it stands. Now in the Hughes case, Representative Hughes is a member of House Finance right now. Representative Hughes had no problem working off-site with the entire committee coming up with a special deal over the weekend and walking into the State House on Monday morning, sitting down at their table and announcing, "Here's what we did over the weekend." Not in the public's eye. So this isn't really about how the process goes on those things; it was how much money his community had to give. He doesn't have a problem doing it now, but he had a problem with supposedly it happened before. Now I think most of us were held accountable in the last elections for any actions we took, even during that Committee of Conference. But what we have done here is we've sat down with the House and we've come up with a set of rules to operate from. And part of the problem that we had last year was that, on the House side, anybody who wanted to know, I guess, wasn't allowed. But on the Senate side, anybody who wanted to know anything about any of the bills, there was an open lunch invitation to every single Senator to come to the President's office and ask questions of any Committee of Conference member that was here. Now why do we need to meet separately? Well, I have heard many of you say to me, "That's the Senate's position, make sure you hold it." Well it comes to a point where we may not be able to hold the Senate position, so you get the Senators who are conferees into a side room and go, "Guys, what do you think? Do we lose the whole thing or do we give them a piece?" Why don't we do that in public? Because we don't want the House side to know and the House side doesn't want the Senate side to know that they are starting to cave. It is negotiations, and any of you who are in business know how that works. So we do step off into a corner room. We do it in caucus. Scripted? How many of you sat here today and read the blurb? How many of you actually wrote your own blurb? I didn't. Mine was scripted. A committee aide scripted my debate today. Something I do every time I stand up, and I thank her, especially from Judiciary. Thank you very much, Susan, because you are a great help. But it is scripted! We're trying very hard to be open. We're saying to people, "Here's the rules, here's how we are going to operate. There should be no confusion." There should be no confusion to anybody who knows that when I get up and leave the Republican caucus, I go downstairs to the Democrat caucus. Because if we are going to have an issue on a bill, it is nice for both sides to know it beforehand so there's no surprises. Scripted? I guess it is. But it makes for a better decorum on this floor. It is nice to be able to work with the colleagues. We had a couple bills today that a couple of the people from the Democrat caucus said to the Republican caucus, "Can you fix this?"

Can you agree to a floor amendment?" So I don't know if any of you noticed, there were three or four people, probably four, there was a couple from each party, over in the corner trying to work something out. Because the bill is important to everyone, but it wasn't that bad a deal to sit there and say, "Can you do this for me so that I feel more comfortable." We're not supposed to do that? We are supposed to stand up here and wash our laundry in the open air all the time? I think it works much better when we allow each other to work together, even if it means going behind that door and having a coffee and working out the details on an amendment. We do it all the time. We are looking to do it in a Committee of Conference. I have been here since 1994 and since I have been here, that's how it has been done. People have always been careful not to have a quorum by having members of the other body in your caucus to talk about what's happening. That is how I describe a Committee of Conference. The Senate is a separate caucus from the House caucus. It is not party at that point. It is how our body decided we thought things should be done. That is the position that we try to uphold, and we can't do that if we have to tell everybody else what we're thinking for strategy. So I ask that we work with the House, we adopt HCR 11 and everybody should have all the knowledge they need on how the process works once we pass this. And if you really want to know what's going on in a Committee of Conference, I've never seen anybody rejected. If a Senator said, "I want to be in that meeting", I've never seen anyone not be allowed in that meeting. So I think all the talk about the Hughes case, let's talk about the Hughes case when it gets to the Supreme Court because that is where it is going. I believe, like the Manchester/Rochester case, it too, will be found that we did the right thing. What we did was constitutional. We've already got one ruling and I am hopeful that the second ruling will come down quickly before we have any Conference Committees. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. This is one of those times when I walked into this chamber thinking I was going to vote one way and the advocacy of a colleague has changed my mind. I want to say thank you to Senator Green because he has reminded me of what I have spent the last eight years trying to do. This is a discussion, not about Representative Hughes and what he did last weekend or how some of us might from time to time, fail to meet the absolute letter of 91-A. It is a discussion about whether we will put state law, 91-A, in a position of primacy over our own desires to operate as is most convenient for us. We are here at the pleasure of the people who elected us. They are the citizens of this state. As Senator Green has said so eloquently, they want to know what we're up to because democracy only functions when the people who elect us know what it is we have done, for better or for worse. Of course we need to be able to communicate with each other around the time of Committees of Conference. As the Democratic Leader of the New Hampshire House last year, I was incredibly frustrated because, as a member of the minority party over there, I couldn't find the room in which decisions were being made, much less get an invitation, Senator Clegg, to be part of the discussion process. I could not represent my 120 Democrats because I couldn't get to where the decisions were happening. It was, as you might imagine, incredibly frustrating. I am not about blaming anybody for that. But I am about doing it better. I am going to vote no on this bill because I think, by voting no, I leave 91-A as the law of this body and the law of this state. I was trained by one of the best politicians and one of the best political leaders I ever had the privilege

of working with, Donna Sytek. Now some of you will be thinking, he was always causing her trouble. Yes, you know, that is part of the job **TAPE CHANGE** made sure that the House position was discussed without breaking the terms of 91-A. She would do that by asking one or more of us to leave the room. She would do that by having discussions in sequence. And she would do that by discussing with each of us individually how we felt about those big issues and the House position on those big issues. There may be some of you who think that's inappropriate or unrealistic, but I think it is what insures the supremacy of 91-A and the public's right-to-know. That is what I believe, and I believe we ought to try to stick to it. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. A few months ago I stood before you and we were talking about rules, Senate rules. We had a discussion that said it's going to take two-thirds to amend any Senate rules that we passed that day. Now, I don't know about the rest of you, but I believe this is a Senate rule. I believe that this piece of paper sets rules for this Senate. I certainly understand where my colleague Senator Green is coming from. But I look at this and say, if we structure rules, and the conversation that we had was, then we should change all rules by a simple majority. That's what we were told. But those rules that we put in place are Senate rules. We consider those rules very important to this body. And to alter those rules it takes two-thirds. I ask the question, is this a Senate rule? If it is not, then why do we have it before us? If it is, why is it then only a simple majority to put this rule in place? It is clear what it is. It is a Senate rule. Now, if the Senate had that position when we first adopted our rules, we should have been put them in place. This should have been before us months ago as part of our rules. Now, there is no question what happened with 302, the people that were here understood it. Yes, my colleague from...my colleague, Senator Clegg is right, 302 with the case that went down from Rochester and Manchester, came back and said it was constitutional. But I bet, if some of the paperwork that was understood, that Senate journals and Senate calendars that showed us dates of May 25th, were really printed on June 9th, there might have been a different effect. So sometimes, yes there are cases that come down and some of us believe in our hearts that there are different answers. Certainly the court has ruled and that's fine. But this, ladies and gentlemen, is a Senate rule. It should pass by two-thirds, not a simple majority. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise in support of the House Concurrent Resolution. I was on the committee that brought this forward, that voted for it. I heard the testimony. I gave my sentiments at the meeting. I think this is an opportunity for the House and the Senate to establish how we are going to work with the Committees of Conference. It is very important that these rules be made public and adhered to. This is an opportunity for both the House and the Senate to recognize clearly how we are going to conduct business at the end of this session. Now each and every Senator should remain vigilant as to what happens when these Committees of Conference are established. But indeed, we have to have something to guide us. This is something to guide us. I think it is appropriate that these be brought forth at this time. I don't think it requires a two-thirds majority. This is a House/Senate Concurrent situation. It doesn't require two-thirds. I don't believe it does. What it says is that we have negotiated with the House, and we have rules for our Committees of Conference. I have been around here

a long time. There have been a lot of Committees of Conference that have been debatable, going way back to the early '70s. I can tell you that the problem, when we get into the eleventh hour, is the contentiousness of the business begins to manifest itself, because the pressures of the business are there. We have a time constraint. We want to get things done. It is very important that the Senate position be established. I agree with that. I think it is very important that Senators have the opportunity to discuss that position. This protects our position as we move forward. I think it is imperative that we do this. I think it is up to each and every one of us to be vigilant as to how we participate in the process. But the process has to go on. I think not to vote for this is an obstruction of the process and I won't have that. Thank you, Mr. President.

PARLIAMENTARY INQUIRY

SENATOR BARNES: Thank you, Mr. President. It is a parliamentary inquiry. Before we go any further, can we have a ruling on whether this is or is not a two-thirds majority vote?

SENATOR EATON (In the Chair): It is not a two-thirds majority vote. It is a joint rule. It is not House rules, it is not Senate rules. It's joint rules. So, just a majority vote is necessary.

SENATOR BARNES: Thank you very much, Mr. President.

SENATOR BURLING: Senator D'Allesandro, if we were to not adopt these rules at this time, but take a position in which we agree to adhere strictly to the provisions of 91-A, could we not do the business of the people just as adequately, just as fully as we might do under any other set of circumstances?

SENATOR D'ALLESANDRO: Thank you for the question, Senator Burling. I am not sure. I think that we should have something in place to use as a guide. That's why I support the concurrent rules. I think we have done this repeatedly. In every legislative session that I have been involved with, this issue comes forward, and you have a Concurrent Resolution whereby you establish how the rapprochement is going to take place when you develop a Committee of Conference. I think history would say, or history would come on my side, that we respect what we put together in conjunction with the House. Now you may not like that, but that is the way it is. I've been here, I think, as long as anybody. I don't think anybody served in this House or Senate longer than I have. So I have watched...except for the honorable Senator Green. We came together, and hopefully, we will be able to remain together, but that is the way I see it, Senator Burling. Thank you, Mr. President.

SENATOR BRAGDON: Thank you, Mr. President. I rise in support of the committee recommendation after a good deal of thought. I thank Senator Green for explaining his position to me and Senator Clegg for his as well. I deeply respect Senator Green, and I have told him so on many occasions, for his positions and his thought out stance on the issues. But as I thought about this, and I think it is very clear, that we, as much as possible, need to conduct our business in the public eye. And, as someone who is a school board member, I can appreciate that as well. I also know that the legislature has made some exceptions to the open meeting laws because there are some instances where meetings must be held, and discussions must be had, behind the public eye. On the school board level, those things involve negotiations with respect to collective bargaining, and discussions about negotiations and strategy on legal issues. I think the Committee of Conference is very akin to that. Each

side is coming in with a position. Each side needs to be able to do some strategy and negotiating discussions with respect to those positions. If those discussions are held publicly, then the other side, who has a contrary position, is privy to that information. So based upon my thought and experience as a school board member, and the exclusions we are allowed to have for very important strategy issues, I will support this committee recommendation.

SENATOR GREEN: Thank you, Mr. President. This is what it's all about. To debate these issues and each of us, as Senators, deciding whether or not we are doing what's in the best interest of the people that elected us. Senator Bragdon, I respect your thought process, but I would say to you that, under 91-A, the exemptions are part of the law. There is no exemption in the law for committees in the legislature. The judge found that as fact. So we are making another exception ourselves, in a joint rule. Not a law, a joint rule, which violates the law. I would like to thank Senator Clegg and Senator D'Allesandro because you made my case for you. For me. You told the public what you do. You told the public it's alright for me, in private, and not let them know what's going on. That's the case. You made it. Thank you. You made the case to the public. This is about the public knowing what's going on. So the public now knows that legislators think it's all right to meet privately and make major decisions on laws and how we spend their money, and it is okay. I'm sure they are going to be interested. Those people who voted in the last election didn't really have a feel for what was going on because it was fresh. It happened in May and June. They really didn't get a handle on it. How often does the public know up-to-date, what's going on around here? Very seldom. But if I've accomplished anything today, the public is now going to be aware that the legislature holds themselves higher, under the law, than the average citizen, and every other public official in this state, who is required to follow the law. So it is okay, I guess, for those of us to vote, and say, "We agree that we are special." Well, I'm not special, and I don't believe that we should be doing this. The House can make any rules they want. They can make anything they want. They can do whatever they want, and they will be held accountable for their actions. But we make our own rules in this Senate, and we are going to be held accountable for what we do. Is that going to make a difference in the election? I don't know. But I think the public really cares about this issue. They really care whether or not the media knows, and whether the public knows what we are doing. And that we are not doing all of these things behind closed doors in secret, and then trying to keep it quiet after the fact. I don't believe the public wants people like that in public office. But we will find out. Do as your conscience directs you. I've made my point. I've made my issue, and members of this body have substantiated my point and my concerns. Thank you very much.

SENATOR BARNES: Thank you, Mr. President. Senator Green, I agree with a lot of things that you have said today. I'm sure my constituents are going to read this in the newspaper or hear it on the internet, are going to agree and say "Jack, why did you go the other way?" I have been up here since 1986, which isn't too long ago, and I have been on many, many, Committees of Conferences, as some of you have. I'm sure Senator D'Allesandro's been on a couple and I'm sure Senator Green has been on his share of them. I don't think we are changing anything that we have been doing since I have been up here. I am afraid that we are going to stifle the process as we go along, so I am voting for that rule, but also, I do not want to exempt the public or have the public think that I

am going behind close doors. You know, you have heard the story about the smoke-filled rooms. That's where everything happened. Well the bill that we had early today was done in a smoke-filled room. I objected and I voted against it today, but I had a chance to vote against it. I don't think we should stifle the process. I will go a step further, because Senator Clegg brought it up earlier in the conversation. We have Democratic caucuses that Senator Larsen runs every week. We have caucuses that Senator Eaton runs every week. When I was the majority leader, and some legal beagle is going to be able to tell me this...when I was the majority leader, a member of the press, who might be sitting over there at that table, and I think I recognize the people, came to me and said, "Can we come up and sit in on your caucus?" I quickly went to Senator Delahunty and said, "Oh my goodness, what do we do? What is the answer to this?" We brought our lawyer in. Our lawyer brought out some RSA that said, "No, you don't have to let the press come in there." I can't tell you what that was, but all the caucuses that I have been to since 1986, and I have been to a few of those, the press has never been there, so we do it, I guess, in a smoke-filled...well it is not smoke-filled anymore, this was smoke-free, but a smoke-free room now, and we do make decisions on how things are going to work out. It keeps the process going. So if we, you know, if the press isn't allowed in our caucuses, what's the big deal? Apparently there is an RSA out there that says they can't come in. If the law said they could, I got a hunch, on a lot of these caucuses, they would be there because a lot of good stuff they could have in their paper gets discussed. So I am voting for it, because I think it would mess up the process. I think it's been going on ever since I have been up here. I have problems with it occasionally, but also you want to remember, everyone here, some of you the first time you are going to be here when we have our Committee of Conference reports. It gets kind of boresome because they get read off up here, boom, boom, boom, boom, boom, boom, boom, boom. I say to you, all the rest of the 23 of us, that is the time for you to rise up and ask questions of what went on behind the doors, and you will all have that opportunity. It might take us another day to go through those Committee of Conferences, because you can't just take them for granted, and it is going to be 100 degrees in here, and you are going to be sweating, and it's going to be smelly before the day is over. But, to do the people's work, you're going to have to analyze them. That is the place, I think, we can do the people's work. Right out here in the open come Committee of Conference time. Thank you very much, Mr. President.

SENATOR KENNEY: Thank you Mr. President. I just had a question of Senator D'Allesandro. When you served on the committee, there is something that has always come to mind on a Committee of Conference, which is the aspect of an amendment that is germane. I don't really see it spelled out here, but who determines whether an amendment is germane? Is it the vote of the Conference Committee? Is it the chairperson of that committee, or is it legal counsel from each body who makes that determination? I say that because we tend to have a lot of last minute housekeeping items at the end of the session that we need to take care of. It is fairly important in my mind.

SENATOR D'ALLESANDRO: Well, I think that we have had a couple of rulings about the germaneness of amendments. I think that they are governed by the body, when indeed the report is returned to us. Whether it is germane or not, you can make that query. You can make that inquiry at the time it is offered.

SENATOR KENNEY: So my understanding that answer to my question, and thank you again, is that, if there are seven people on that Committee of Conference, it's those seven people who determine whether that is a germane amendment or not?

SENATOR D'ALLESANDRO: Well, I think the people involved, yes. They could...if indeed, I think there was a query, they could ask legal counsel of either the House or the Senate. But when it comes back to the body, if you think it is a non-germane item, bring it up in terms of the discussion. The body has the ultimate say on the issue.

SENATOR KENNEY: Okay. That clears it up. Thank you.

SENATOR BARNES: Thank you. The question is to the chair. It has been my understanding that when we talk about germane amendments, it always goes to the chair of this body and the chair of this body makes the decision whether it is germane or not.

SENATOR EATON (In the Chair): I believe you are correct, Senator Barnes.

SENATOR BARNES: So that's where it lies, right up there in the front of the room. Thank you.

SENATOR KENNEY: Thank you, Mr. President.

The question is on the motion of ought to pass.

A roll call was requested by Senator Green.

Seconded by Senator Burling.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan.

The following Senators voted No: Gallus, Burling, Green, Gatsas, Fuller Clark.

Yeas: 19 - Nays: 5

Adopted.

Ordered to third reading.

HB 440, relative to hearing ear dogs, guide dogs, and service dogs. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Environment and Wildlife

April 20, 2005

2005-1209s

01/10

Amendment to HB 440

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect upon its passage.

SENATOR BARNES: Thank you, Mr. President. I move HB 440 ought to pass with amendment. House Bill 440 clarifies the penalty for interference with a service dog. These highly trained dogs are invaluable to the people they help. They become an extension of the person, allowing for a full and independent life. Any attack on the dog is also an attack on the person who works with that dog. We had...probably during the committee hearing, six folks in there with their service dogs. Also, a service dog

is trained not to attack. Many of the things that happen, another dog attacks these dogs. If a dog is attacked, that \$50,000 to \$70,000 investment, that's what they cost, is wasted. The dog can no longer be used to help the folks. I urge you to support the committee amendment, which makes the bill effective upon passage, and then to support a floor amendment. During the hearing, we heard requests from many dog users to name the bill in honor of a very special dog. My floor amendment will add a statement of purpose to the bill. The Environment and Wildlife Committee asks your support for the bill and both amendments. Thank you, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I rise in opposition to this bill, not necessarily on its intent. This bill, I believe, is badly flawed, in that the title of the bill says that it is "relative to hearing ear dogs, guide dogs, and service dogs." However, the bill itself only pertains to service dogs. Reading the RSA definition of service dog which is 167-D:1, IX, service dog means a dog who works for a mobility impaired person. A service dog does not include the...that definition does not include blind or hearing impaired. It is simply people who are mobility impaired. The definition also lacks any specificity as to what that dog would be doing for a mobility impaired person, nor does it specify that this dog has to be specially trained. It simply says that the dog works for a mobility impaired person. Mobility impaired, there is a definition for that, it refers to "a physiological defect or deficiency regardless of cause, nature or extent, which renders a person unable to move about without the aid of crutches, a wheelchair or other form of support, or that limits the persons functionality to ambulate, climb, descend, sit, rise or perform related functions." So what this bill is really saying is that we are raising to felony any mistreatment, otherwise mistreats a service dog. A service dog which could be simply a pet of someone who has a walking disability. It does not necessary have to be a trained dog. Does not have to be doing anything other than, under this definition, working for the person. So we are raising to a felony, an offense that I don't believe if it was the person themselves, would necessarily be a felony. I don't think that willfully mistreating, I am not sure what that really means, but willfully mistreating the person with the disability rises to a class B felony in this state. I think that is a serious flaw in this bill. We are criminalizing something that happens to a dog that probably is not criminal if it happens to the person. I am not a lawyer so I don't know exactly whether...I am sure torturing, beats...I am not sure necessarily kicking always rises to the felony threshold. Striking, injures. I am not sure that always rises to the threshold of felony. So there are some very serious problems with that, but again, it does not apply to dogs used by the blind or hearing impaired. It only applies to people who are mobility impaired and it does not apply, as was implied by my proceeding speaker, it does not necessarily apply to a dog that is even specially trained. There is a section in there that defines a service dog trainer; however, the definition of service dog does not require any special training of the dog, nor does it even specify what the dog would be doing. I think this bill needs a lot more work, and I am not willing to vote to pass it today with these flaws. If it is intended, as the title of the bill implies, if it is intended to imply to hearing ear dogs, guide dogs and service dogs, that should be fixed. The definition of service dogs definitely needs to be fixed to say that it really is some special dog that has been trained and is worth the \$70,000 or so dollars that was implied, and not simply a dog that is owned by someone who has a walking disability permit. I understand that some

people treat their dogs very, very well and treasure their animals and, be that as it may, I don't believe that raising all of these things to the level of a class B felony is necessary, wise or prudent. So therefore, I ask that we overturn the...this ought to pass, and if nothing else, either refer or recommit so that this bill could be turned into something that might be, on its face, resembling what the title says.

SENATOR HASSAN: Thank you, Mr. President. Would you believe I have a floor amendment that addresses most of those concerns, Senator Boyce? We did have some concerns there this morning about raising this issue to the level of a class B felony, although I will note that our current statute has a class B felony in place for willfully beating or torturing a dog. But my floor amendment, I don't know that it's quite proper to speak about the floor amendment yet because we haven't...

SENATOR EATON (In the Chair): Senator Hassan, we have one amendment, the committee amendment that we would have to vote on. Senator Barnes I believe will have an amendment, and then you would have an amendment to vote on. Then the full bill, if there were concerns, would be voted on at that point.

SENATOR HASSAN: Okay. I won't speak then more, to my amendment, but I just do want to make people aware that there has been discussion and there is a floor amendment that I think will address most of Senator Boyce's concerns.

Amendment adopted.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

April 26, 2005

2005-1253s

01/09

Floor Amendment to HB 440

Amend the bill by inserting after the enacting clause the following and renumbering the original sections 1-3 to read as 2-4, respectively:

1 Statement of Purpose. The general court recognizes the importance of trained service dogs to the persons who need such animals. The general court hereby establishes this act in honor of "Fen" who was attacked by another dog and so traumatized that "Fen" could no longer perform service duties and had to be retired from service.

SENATOR BARNES: Thank you, Mr. President. I have an amendment 1253s. It's a friendly amendment. No, it is a very friendly one. Thank you, Mr. President. "Amend the bill by inserting after the enacting clause the following and renumbering the original sections 1-3 to read as 2-4, respectively: 1 Statement of Purpose. The general court recognizes the importance of trained service dogs to the persons who need such animals. The general court hereby establishes this act in honor of Fen, who was attacked by another dog and so traumatized that Fen could no longer perform service duties and had to be retired from service." Might I add, it was Fen who brought this bill forward to the legislature because of what happened to Fen. Thank you very much and I hope you can support that amendment.

Floor amendment adopted.

Senator Hassan offered a floor amendment.

Sen. Roberge, Dist. 9
Sen. Hassan, Dist. 23
Sen. Barnes, Dist. 17

April 28, 2005

2005-1289s

01/09

Floor Amendment to HB 440

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose. The general court recognizes the importance of trained service dogs to the persons who need such animals. The general court hereby establishes this act in honor of "Fen" who was attacked by another dog and so traumatized that "Fen" could no longer perform service duties and had to be retired from service.

2 New Paragraph; Prohibited Acts. Amend RSA 167-D:7 by inserting after paragraph II the following new paragraph:

III. It is unlawful for any person to willfully interfere or attempt to interfere with a service dog, as defined in RSA 167-D:1, IX.

3 Penalty. Amend RSA 167-D:9 to read as follows:

167-D:9 Penalty.

I. Any person violating any provision of this chapter shall be guilty of a misdemeanor.

II. Any person who purposely tortures, beats, kicks, strikes, mutilates, injures, or disables a service dog, or who purposely causes the death of a service dog shall be guilty of a class A misdemeanor.

4 Effective Date. This act shall take effect upon its passage.

SENATOR HASSAN: Thank you, Mr. President. As mentioned earlier, I also have a floor amendment, which is floor amendment 1289, which is being passed out at this time. As mentioned earlier, there was concern about the fact that the bill would impose a class B felony on the list of wrongdoing, any person who willfully, tortures, beats, kicks, strikes, mutilates, injures, or disables or otherwise mistreats a service dog. And to address that, this floor amendment would change that paragraph to say, "Any person who purposely tortures, beats, kicks, strikes, mutilates, injures, or disables a service dog, or who purposely causes the death of a service dog shall be guilty of a class A misdemeanor." So we have changed the class B felony to a class A misdemeanor and we have taken out the language that refers to otherwise mistreating a service dog because that seemed so broad that it could unintentionally penalize the owners of these service dogs for something that somebody perceived to be mistreatment. So, with this floor amendment in place, we believe it appropriately narrows the bill to address the mistreatment of service dogs, the purposeful mistreatment of service dogs that it was intended to address. I urge my colleagues to support this floor amendment. Thank you, Mr. President.

SENATOR MARTEL: Thank you very much, Senator Hassan. I am not going to oppose this amendment. I think it is fine, but I do have a question. The issue is that these dogs are properly trained, but sometimes they could go and lose their tempers or be violent. If they attack a person and that person defends themselves, is there a part of this bill that is going to strike the issues of them not being charged with a class A misdemeanor, depending on who determines what happened when a dog attacks?

SENATOR HASSAN: Thank you for the question, Senator. We did not hear any testimony about properly trained service dogs attacking people. In fact, they are trained not to attack, and they don't qualify as being service animals if in fact they do attack, even if they respond to another dog attacking them. So we do not see that as a problem that needs to be addressed. But, again, the language of this floor amendment says, "anybody who purposely tortures, beats, kicks, strikes, mutilates, injures or disables." And I would assume that a prosecutor could read this and understand a self defense mechanism in play, should that arise. The other thing I will tell you is I think that a number of the items this morning that have been raised, this bill will go to a Committee of Conference and are things we can work out in a Committee of Conference based on this discussion.

SENATOR MARTEL: Thank you.

SENATOR BURLING: Thank you. Senator Hassan, would I be correct in assuming that, under your amendment, anybody who did any of these awful things, would be subject to a year incarceration in a county jail and up to \$1,000 fine?

SENATOR HASSAN: I think it is up to a \$2,000 fines under the current statute.

SENATOR BURLING: Would I also be correct that, with regard to the value of these dogs, and they are extraordinary valuable, there is always the right of civil action to recover the cost of a dog who is lost to service?

SENATOR HASSAN: That is certainly my understanding as well, Senator Burling. Thank you.

SENATOR BURLING: Thank you.

SENATOR BARNES: I would just like to answer a little bit of Senator Martel's question about the dogs attacking people. Would you believe, Senator Martel, that during the testimony, and I know about as much guide dogs as the next guy, during the testimony that we heard, it was very compelling. That the guide dogs are trained. That part of that \$70,000 not to attack. That's what happened to Fen. Fen was attacked and did not retaliate. These guide dogs are trained to not to attack. They just stand there and get beat up. That is what happened. They do not, and no cases have been brought forward to us where the guide dog has attacked a person.

SENATOR MARTEL: Thank you for clarifying that.

SENATOR BARNES: You're welcome.

SENATOR BOYCE: Thank you, Mr. President. I want to thank Senator Hassan for bringing this amendment. It does address several of my problems, but it still does not solve the problem that the service dog definition is too broad and not specific to what a service dog is. It also doesn't apply this to the hearing or seeing disabled, or vision disabled people, their dogs. She said that it could happen in a Committee of Conference. But, you know, if the Speaker of the House decides that that language to change that section of the definition to make it so that it applies to hearing disabled people's dogs or visually disabled people's dogs, if that was deemed to be non-germane, it would not be allowed in a Committee of Conference. We just voted on that. So I really think this bill should be fixed before we send it off to a Committee of Conference. I think, as I said before, I think its intent is admirable. I think that this change to

make it a misdemeanor is correct and a proper way to go, but I do still see that there is these glaring flaws. It still does not apply to dogs used by the blind and hearing disabled. It does not specify exactly what a service dog is and it does not specify that it has to be a specially trained service dog. It still could apply to any dog owned by someone with a walking disability permit. I believe that is much too broad a definition and is not something we should leave to Committee of Conference. We should fix it before it goes to them.

SENATOR EATON (In the Chair): The chair would rule that those would be germane. Thank you, Senator Boyce. We would...Committee of Conference members would be very astute at negotiating and we would also make the House see that.

SENATOR HASSAN: Thank you, Mr. President. I just wanted to respond as well that I think, given the title of the bill that was passed over to us from the House, given the statement of intent in the bill and on the amendments, I think we are safe to have both chairs consider that it would be germane to address those issues. I also note that, in the statement of purpose, it says that we recognize the importance of trained service dogs. So I think we have plenty of substantiation here for the intent of the bill, and it is something that could be addressed in Committee of Conference.

SENATOR LETOURNEAU: Thank you. I am not rising in opposition to the bill, I am in support of your effort. I think it is an honorable effort. The question I have is, and I want to know how this is handled, because the statement of purpose talks about this dog Fen that was attacked and could no longer perform service. How is that handled under this provision? Is the owner responsible for the actions of his animal? Is that how it is handled in this? I just need to be clear on that. Thank you.

SENATOR HASSAN: Thank you for the question. It is an excellent question. It is my understanding that the owner would be responsible for allowing his or her dog...for purposely allowing his or her dog to attack a service dog. I guess it certainly doesn't...since we can't punish the dog with a class A misdemeanor.

SENATOR LETOURNEAU: You said purposely. So, if it was one of those instances, and I have seen dogs do this. You're walking down the street and two people have dogs on leashes and they suddenly just don't like each other and they attack each other. I see both the owners struggling to pull them back. Is that person that is trying to stop this action from occurring, is he going to be under this first class A misdemeanor?

SENATOR HASSAN: I am certainly not a prosecutor, but my common-sense response to this, and the testimony we heard about the dog attacks were dogs who were off leashes in areas where there are leash laws, who...and the sight impaired owner of the service dogs, would hear them kind of not try to reign their dog in by voice command or anything else, and allow the dog fight to occur, and allow their unleashed animal to attack a service dog who clearly has a harness on and because these service dogs are not trained to fight back, it is a complete attack at that point in time. So I think the word purposely protects that person who is trying to reign in the dog on the leash. We did not hear that those were the instances that were of concern to the people who brought this bill. The instances that are the impetus for this bill were very defined for us and I think this bill addresses them.

SENATOR LETOURNEAU: Thank you very much, Senator.

SENATOR HASSAN: Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 38, relative to theft of personal checks and credit cards.

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor.

HB 112, relative to psychiatric evaluations in competency hearings.

HB 144-L, relative to special elections for municipal charter amendments.

HB 147, relative to the death penalty.

HB 265, relative to minutes of land use board meetings involving developments of regional impact.

HB 280, relative to the manner of service in divorce and child custody proceedings.

HB 299, establishing a committee to study state laws governing liens for labor and materials.

HB 382, establishing a committee to develop a strategic capital plan for department of corrections' facilities.

HB 420, relative to receiving and addressing complaints against licensees by the board of mental health practice.

HB 440, relative to hearing ear dogs, guide dogs, and service dogs.

HB 447-FN, relative to black bear license and tag fees.

HB 449-FN, relative to special wild turkey seasons and permits.

HB 472, relative to the definition of recreational program.

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

HB 499, relative to participation in and administration of the Manchester employees' contributory retirement system.

HB 521, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system.

HB 532, relative to the licensure of dentists by the board of dental examiners.

HB 546, relative to the status of the board of trustees of the retirement system.

HCR 11, establishing joint rules for committees of conference for the 2005 and 2006 sessions of the New Hampshire general court.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 158, relative to Auburn, Exeter, and Hampton District Courts.

HB 222-FN, relative to payment of medical benefits costs for disabled group II members of the retirement system.

HB 616-FN-L, relative to the education property tax and the education equity index.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED, that in accordance with the list in the possession of the Clerk, House legislation numbered 158-616 shall be by this resolution read a first and second time by the therein listed title(s), and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 158, relative to Auburn, Exeter, and Hampton District Courts. (Judiciary)

HB 222-FN, relative to payment of medical benefits costs for disabled group II members of the retirement system. (Banks and Insurance)

HB 616-FN-L, relative to the education property tax and the education equity index. (Finance)

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 41, relative to the right-to-know oversight commission.

HB 74, relative to the sale of permissible fireworks.

HB 95, relative to delegates to state party conventions.

HB 107, relative to the use of artificial light to view moose in Coos County.

HB 150, defining truancy.

HB 181, establishing a committee to study the special account in the New Hampshire retirement system.

HB 223, relative to the procedure for assignment of juvenile probation and parole officers.

HB 308, relative to the special education payment distribution schedule and relative to alternative dispute resolution proceedings in special education.

HB 445, relative to the taking of certain game birds and fur-bearing animals.

HB 540-FN, relative to the disposal of real property purchased with highway or turnpike funds.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 40, relative to inspection dates for certain vehicles.

HB 53, repealing a 1901 law relating to the apportionment of library funds in the town of Haverhill.

HB 58, relative to the effective date for the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

HB 87, relative to the authority of the Carroll county public water system.

HB 99, changing the name of the college for lifelong learning to Granite state college.

HB 111, establishing a commission to study the elimination of cervical cancer in the state of New Hampshire.

HB 124, naming a certain portion of New Hampshire Route 125 the Officer Mel Keddy Memorial highway.

HB 148, transferring the New Hampshire estuaries project from the department of environmental services to the university of New Hampshire.

HB 160, naming a certain bridge on New Hampshire Route 3 between Pembroke and Allenstown.

HB 171, relative to nicknames on ballots.

HB 242, relative to falsification of motor vehicle applications filed with the department of safety.

HB 266, relative to the procedure for dismissal or suspension of a police chief.

HB 277, relative to special elections for executive councilor, state senator, and state representative.

HB 340, renaming Jones Brook Wildlife Management Area in Strafford County for former chairman of the fish and game commission, Ellis Hatch, Jr., and naming a building at the Sandy Point Discovery Center in Stratham for former governor Hugh Gregg.

HB 444, relative to the surrender and condemnation of game animals to the fish and game department.

HB 446, relative to applications for resident hunting or fishing licenses.

HB 457, relative to excavating and dredging permit exemptions for water conveyance systems.

HB 462, prohibiting road toll refunds for idling time.

HB 504, relative to the assessment or refund of real estate transfer taxes, and the recording of plans with the register of deeds.

HB 560, relative to timber harvesting.

HB 570, relative to preliminary site plan review and the definition of inclusionary zoning.

Senator D'Allesandro moved adoption.

Adopted.

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

May 5, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend Jared Rardin, Senior Pastor at the South Congregational Church in Concord, guest chaplain to the Senate, offered the prayer.

Good Morning! President Eaton and Senators, thank you so much for the privilege of being here with you this morning, albeit on last minute notice. So, the advantage is the prayer will be short and I want to extend to you thanks for your hard work and devotion on behalf of the people of the South Congregational Church. Let us pray.

Gracious God, here we are at the beginning of a new day. As the sun shines, so may Your will and Your love shine in our hearts and in our minds. May good, healthy debate, passion and openness guide today's debates, and may we find not only that Your will is done, but that the will of the people of New Hampshire is done. In Your name we pray. Amen

Senator Barnes led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

HB 195, establishing a committee to study the department of insurance. Banks and Insurance Committee. Ought to pass with amendment, Vote 4-1. Senator Barnes for the committee.

Banks and Insurance

April 25, 2005

2005-1258s

01/09

Amendment to HB 195

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the department of insurance and awarding of the bids for health insurance for state employees.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the department of insurance and awarding of the bids for health insurance for state employees.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study the department of insurance, including whether it should be combined with any other agency, consumer issues, and efficiency of operation. The committee shall also study the process of awarding the bids for health insurance for state employees, including the awarding of the last bid to CIGNA, and any other matter related to the committee's quest.

2005-1258s

AMENDED ANALYSIS

This bill establishes a committee to study the department of insurance, including whether it should be combined with any other agency. The committee shall also study awarding of the bids for health insurance for state employees.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 195 Ought to pass with amendment. This bill establishes a study committee to study the duties of the Insurance Department. There have been several concerns raised regarding consumer protection and how complaints are dealt with, within the department. This study committee would look at the way these issues are handled. Please join the Banks and Insurance Committee and support the motion of Ought to pass with amendment. Incidentally, there is going to be a friendly amendment proposed after we vote on this. Thank you very much.

Amendment adopted.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

May 5, 2005

2005-1352s

09/01

Floor Amendment to HB 195

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the department of insurance and awarding of the bids for health insurance for state employees.

Amend the bill by replacing section 1 with the following:

1 Committee Established. There is established a committee to study the department of insurance and awarding of the bids for health insurance for state employees.

Amend the bill by replacing section 3 with the following:

3 Duties. The committee shall study the department of insurance, including whether it should be combined with any other agency, consumer issues, and efficiency of operation. The committee shall also study the process of awarding the bids for health insurance for state employees, including the awarding of the last contract bid, and any other matter related to the committee's quest.

2005-1352s**AMENDED ANALYSIS**

This bill establishes a committee to study the department of insurance, including whether it should be combined with any other agency. The committee shall also study awarding of the bids for health insurance for state employees.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. It is being passed out. Very briefly, this is very simple. An error that I made on the original amendment in committee, was that I put in the name of a company and I should not have done it. I am asking that you pass this amendment which strikes out the name of the company. I apologize to the company for any embarrassment or inconvenience that I might have caused. Please pass this amendment and straighten this matter out. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 210-FN, relative to the determination of absence and return of contributions of members of the retirement system. Banks and Insurance Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move that House Bill 210 Ought to pass. Currently, the law allows non-vested members to leave accumulated contributions in the retirement fund up to six years. As a result of an audit that was done three years ago, the recommendation of the audit team was that we reduce this to two years. The reason being that people that leave state employment, can leave their money in there for six years and we are paying 9 percent interest on that six years, and the recommendation is to move it to two. The Banks and Insurance Committee asks your support on this motion of Ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 389, relative to the duties of the postsecondary education commission. Education Committee. Ought to pass, Vote 4-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. Failing the receipt of any remarks, I would just say that the Senate Education Committee would appreciate your support on this bill which allows the Postsecondary Commission to adopt rules to define residency based on legislation. It will define residency in conjunction with what we currently do with regard to the university system so we will have a uniform definition. We appreciate your support. Thank you.

Adopted.

Ordered to third reading.

HB 293, establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan County. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-2. Senator Burling for the committee.

Energy and Economic Development
April 27, 2005
2005-1278s
08/09

Amendment to HB 293

Amend paragraph I of section 2 of the bill by replacing it with the following:

- I. The members of the commission shall be as follows:
 - (a) One member of the house environment and agriculture committee, appointed by the speaker of the house of representatives.
 - (b) One member of the house public works and highways committee, appointed by the speaker of the house of representatives.
 - (c) One member of the senate environment and wildlife committee, appointed by the president of the senate.
 - (d) One member of the senate energy and economic development committee, appointed by the president of the senate.
 - (e) A representative from each municipality in Sullivan county, appointed by the governing body of the respective municipality.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move House Bill 293 Ought to pass as amended. House Bill 293 establishes...as introduced, excuse me, established a commission to study the possibility of developing a materials resource and recovery facility in Sullivan County. The committee heard testimony that smaller towns in New Hampshire need to learn how to manage their waste. The reason the sponsors asked for a study commission was this issue is not getting resolved at the local level and the communities involved needed some help getting expertise from across the state. The committee amendment changes the study commission to a committee that had full approval from the sponsors. Please join the Energy Committee in voting Ought to pass as amended. Thank you, Mr. President.

Amendment adopted.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15
 Sen. Burling, Dist. 5
 Sen. Barnes, Dist. 17
 Sen. Flanders, Dist. 7

May 5, 2005
2005-1351s
08/05

Floor Amendment to HB 293

Amend the title of the bill by replacing it with the following:

AN ACT establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county, and relative to exemptions for disposing of leaf and yard waste.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 7:

6 Leaf and Yard Waste Incineration; Continued Exemption. Amend RSA 149-M:27, III to read as follows:

III. No leaf or yard waste shall be disposed in a solid waste landfill or incinerator including any waste-to-energy facility. This paragraph shall *continue to* not apply to municipalities organized under RSA 53-A,

RSA 53-B, or 1986, 139, *or to entities with which said municipalities may contract*, if application of the paragraph would [cause] *have caused* the municipality to violate or incur penalties under legal obligations existing on January 1, 1993. Any person who violates this paragraph shall be subject to the penalties and enforcement provisions of RSA 149-M:15 and 16.

2005-1351s

AMENDED ANALYSIS

This bill establishes a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan county.

This bill also continues an exemption to the ban on the incineration of leaf and yard waste by certain municipalities and extends that exemption to entities with which the municipality may contract.

SENATOR LARSEN: Thank you, Mr. President. I rise to offer a floor amendment. There is currently in state law, an exemption for the Penacook Waste To Energy Plant, a cooperative of, I haven't counted how many communities, but it includes the towns of Allenstown, Belmont, Bow, Bristol, Concord, Dunbarton, Gilford, Henniker, Hillsboro, Laconia, Northfield, Salisbury, Warner, Webster, Andover, Boscawen, Bradford, Canterbury, Deering, Franklin, Gilmanton, Hill, Hopkinton, Loudon, Pembroke, Tilton, and Weare. Those communities are part of the Waste to Energy Cooperative Incineration Plant that is located in the town of Penacook, which is part of Concord. The issue has come up that all those communities have been notified that if grass clippings appear in the waste stream, there will be fines on both, I believe, the facility and the communities as well as the individuals. As all of us know, the grass cutting season is approaching; however, many of these communities have just been informed that they have to remove their grass clippings from the waste stream. At least the community of Concord, while it has a composting facility for leaves and is prepared for leaf pickup and separation of that from the waste stream, the issue of separating out all grass clippings, lawn clippings has come up. Concord, as a community, is ill-prepared to have the composting of 40,000 different individuals' lawns. So what this amendment does is continue what we believe is already an exemption for those municipalities organized. Concord is organized under chapter law of 1986, Chapter Law 139 to continue to have an exemption from this requirement. Clearly we want to encourage composting. Clearly we want to have as much removed from the waste stream and get our tonnage down because that is cost to all of our communities. But, this amendment will help us until we can organize ourselves in a way that composting can happen in these communities, but we need a little more time to get ready for that. So this just says that it continues to be exempt. I encourage your...

SENATOR BARNES: I am going to make it very quick, Mr. President.

SENATOR LARSEN: Is it a question?

SENATOR BARNES: It is a question, Senator. Did I hear you mention the great town of Allenstown has to, if we don't pass this, not have to pick out their grass clippings?

SENATOR LARSEN: You heard it correctly. Allenstown is in there with all of those other communities.

SENATOR BARNES: Thank you very much, Senator. I urge my colleagues to certainly vote for this amendment.

SENATOR LARSEN: Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 414, relative to regulation of municipal waste combustors. Energy and Economic Development Committee. Ought to pass, Vote 4-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 414 Ought to pass. The bill requires small municipal incinerators to meet the same standards as large incinerators. The bill only applies to one plant located in Claremont, and the owner of the plant has agreed to meet the new standards. Please join the Energy Committee in voting Ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-2. Senator Odell for the committee.

Energy and Economic Development

April 27, 2005

2005-1277s

08/09

Amendment to HB 580

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study:

I. The procedures for the formation and dissolution of a solid waste management district.

II. The benefits of authorizing the formation of a solid waste management district by a single town under RSA 53-B.

III. The effect of withdrawal of a majority of the members from a solid waste management district on the continuing environmental liabilities of the remaining district members.

IV. The procedures for the admission and withdrawal of members from an existing solid waste management district.

V. The procedures for the dissolution of an existing interstate solid waste compact under RSA 53-D.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, all member municipalities of the New Hampshire/Vermont solid waste district, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

2005-1277s

AMENDED ANALYSIS

This bill establishes a committee to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

SENATOR ODELL: Thank you, Mr. President. I move House Bill 580 Ought to pass as amended. Several towns, including some in the state of Vermont, entered into a bi-state solid waste district a number of years ago. The contract ends in 2007. The towns that have the waste facilities in their communities need assurance that they will not be solely responsible for any liabilities once the contract amongst the communities runs out. The committee heard testimony that all of the communities who entered into the contract did not anticipate what would happen if they wanted to dissolve the contract, and they need the state's expertise to help them through this transition. The amendment changed the study commission into a study committee and has the support of all the sponsors. Please support the Energy Committee recommendation of Ought to pass as amended. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 55-FN-A, relative to industrial hemp and establishing an industrial hemp special program fund. Environment and Wildlife Committee. Inexpedient to legislate, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 55 inexpedient to legislate. House Bill 55 would establish an industrial hemp industry in New Hampshire. The committee wants to support farmers in the state and understands their efforts to bring in new industry. The Environmental Protection Agency has not issued permits to New Hampshire while hemp is on the controlled substance list. For this reason, the Environment and Wildlife Committee asks for your support for the motion inexpedient to legislate. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the inexpedient motion. I recognize that the hemp situation has been around for a long period of time. The Representative who has introduced this bill has got it past the House a number of times, but failed to get it passed in the Senate. I would hope my colleagues would recognize that hemp was used for cordage on our naval ships for years and years and years. It is the strongest fiber in the world. The strongest fiber in the world. Currently, the United States of America has produced a controlled substance list. Hemp is not on that list. Industrial hemp is not on that list. A number of states, Arizona, Arkansas, California, Hawaii, Illinois, Kentucky, Maryland, Minnesota, Montana, New Mexico, North Dakota, Vermont, Virginia and West Virginia, all permit the cultivation of hemp. There are dozens of companies in the United States that are looking to buy various parts of the industrial hemp plants. Again, if you gaze at this situation, you recognize that we are losing an economic opportunity. Hemp is the most widely used, it is a universal product that exists and it is the strongest fiber in the world. It can be used for textiles, building materials, industrial products, paper, paints, varnishes, roofing materials, building blocks and a number of other things. The group that supports this bill had an open house over at Upham Walker and showed you the number of products that could be produced by hemp. We are dying for a new industrial base. We are dying for a new product that can provide jobs and do something for our economy. It seems to me we're missing an opportunity. I'm sure some of you have been to the old cordage factory in Plymouth, Massachusetts where cordage was made for the Navy. The hemp cord was produced there and was a staple for our naval vessels for years and years and years. I would hope that you would consider this. We are looking for industrial products that can be produced in the state of New Hampshire that can help our economy. This is one that can do that. So think about that as you cast your vote. Thank you, Mr. President.

SENATOR JOHNSON: Thank you, Mr. President. I want to speak a moment. I want to thank Senator D'Allesandro for bringing that history lesson to us. Thank you. But, I think I can speak for the committee in saying that we talked with the people at the hearing who were involved in the Hemp Council, and we strongly suggested to them that, if they feel that strongly about it, then they should be in Washington, talking to those people in Washington on that committee, to get New Hampshire the certificate that they would need to make that happen. Right now, we took an oath of office to uphold the laws of the state of New Hampshire and I think that is what we are doing in the committee. Thank you.

SENATOR LARSEN: Senator Johnson, I understood that there was a federal court decision indicating that this industrial hemp is still part of the controlled substance list. Did I hear that correctly?

SENATOR JOHNSON: I did not recall that in the testimony.

SENATOR LARSEN: Thanks.

SENATOR HASSAN: Thank you, Mr. President. If I may, I could respond to Senator Larsen's question. I believe we did hear testimony from the Attorney General's Office that there is a first circuit opinion which governs New Hampshire, which does say that industrial hemp is still considered a controlled substance by the federal government, and under the court's interpretation of the federal statute. That was certainly influential in my vote on this matter. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 386, relative to agricultural best management practices. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Gallus for the committee.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 386 Ought to pass. House Bill 386 clarifies the definition of agricultural compost to allow the composting of organic matter. The bill also replaces "chemical fertilizer" with "commercial fertilizer" because not all fertilizers used in agriculture are chemical. The Environment and Wildlife Committee asks your support for the motion of Ought to pass. We thank you.

Adopted.**Ordered to third reading.**

HB 411, relative to the North Conway water precinct. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 411 Ought to pass. House Bill 411 reaffirms the authority granted to the North Conway Water Precinct on February 14, 1905. This codifies that the voters acted as the legal body politic of the North Conway Water Precinct when they voted to establish and fund capital reserve trust funds. The second part of the bill simply ratifies the votes and the proceedings of the annual meeting of the North Conway Water Precinct of March 31, 2004. The Environment and Wildlife Committee asks your support for the motion of Ought to pass. Thank you.

Adopted.**Ordered to third reading.**

HB 432-FN, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 432 Ought to pass with amendment. House Bill 432 allows the Department of Environmental Services to use certain fees for the Septage Handling and Treatment Facilities Grant Program. The second part of the bill simply extends the temporary use authorization for septage and sludge land application until July 1, 2007 as the grandfather clause currently runs out July of 2005. The Environment and Wildlife Committee asks your support for the motion of Ought to pass. Thank you, Mr. President.

Adopted.**Referred to the Finance Committee (Rule #26).**

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gatsas for the committee.

Environment and Wildlife**April 27, 2005****2005-1271s****06/01****Amendment to HB 487-FN**

Amend RSA 487:32 as inserted by section 1 of the bill by replacing it with the following:

487:32 Volunteer Lake Assessment Program Coordinator. There is established in the department of environmental services a state volunteer lake assessment program coordinator who shall be a classified employee qualified by reason of education and experience and who shall administer the New Hampshire volunteer lake assessment program.

SENATOR GATSAS: Thank you, Mr. President. I move House Bill 487 Ought to pass with amendment. There will be a friendly floor amendment coming from Senator Johnson also. I urge you to vote that. House Bill 487 formally establishes the Volunteer Lake Assessment Program. This is an excellent program that has been monitoring our lakes for over twenty years. No new salary or spending is necessary, Senator Morse. The committee amendment removes a reference to the office of the Commissioner because the Program Coordinator actually works in the Water Services Division. The Environment and Wildlife Committee asks your support for the motion of Ought to pass with amendment. Thank you.

Amendment adopted.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

May 4, 2005

2005-1348s

06/09

Floor Amendment to HB 487-FN

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 Volunteer Lake Assessment Program Coordinator to be Current Employee. The volunteer lake assessment program coordinator position established in RSA 487:32 as inserted by section 1 of this act shall be filled by a biologist I who is currently employed in the department of environmental services. The establishment of the volunteer lake assessment program coordinator position does not create an additional position in the department.

SENATOR JOHNSON: Thank you, Mr. President. I have a floor amendment to House Bill 487. The floor amendment is 1348s and, while it is being passed out, it is a very friendly amendment. All it really says is "The establishment of the volunteer lake assessment program coordinator position does not create an additional position in the department," as that person is already working in the department. Senator Gatsas alluded to that in his statements also. I ask that you pass the floor amendment 1348s. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 547 Ought to pass. House Bill 547 increases the funding limit for on-premise-use fuel oil storage facilities. The costs of repair and removal of oil tanks has risen and the Oil Disbursement Board unanimously recommended

that funding caps should be updated. The funding for these reimbursements comes from oil import fees. The Environment and Wildlife Committee unanimously asks your support of Ought to pass. Thank you.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 216-FN, relative to the authority of the New Hampshire retirement system to purchase supplies and services. Executive Departments and Administration Committee. Ought to pass, Vote 3-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move Ought to pass on House Bill 216. This legislation will allow the retirement system to purchase supplies and services outside of the Department of Administrative Services. This will allow the system to be more responding and more efficient to the members of the...the needs of their members. May I remind you that the retirement system does act within its own. They own their own building, for example. They do not use general funds and we feel, as a member of the board of trustees, that we can be more efficient by buying our own supplies and services. The ED and A Committee asks your support on this motion of Ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 313-FN, relative to registration of business entities. Executive Departments and Administration Committee. Ought to pass, Vote 5-0. Senator Kenney for the committee.

MOTION TO TABLE

Senator Kenney moved to have HB 313-FN laid on the table.

Adopted.

LAID ON THE TABLE

HB 313-FN, relative to registration of business entities.

HB 465-FN, authorizing the board of medicine to take non-disciplinary remedial action against physicians. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Fuller Clark for the committee.

SENATOR FULLER CLARK: Thank you, Mr. President. I move that House Bill 465 Ought to pass. This bill allows the Board of Medicine to take non-disciplinary actions against physicians. Currently, the only option the Board has while dealing with a physician with a disability or disease is revoking their license. This bill would allow them to suspend, recommend treatment, or practice under another physician. The ED and A Committee asks your support for the motion of Ought to pass.

SENATOR FOSTER: Of Senator Fuller Clark, if I may. Thank you. In looking at the statute that currently exists, and I may be reading it wrong, it looked to me as if, they right now have the power to write a letter, which is non-disciplinary in nature, to ask for remedial or other actions. Was that not the testimony that you received in the committee, that they don't have that power right now?

SENATOR FULLER CLARK: Frankly, I don't remember, to tell you the truth, but we did hear from the Medical Society that this was legisla-

tion that they felt would be important to be able to treat and work with certain physicians who did not deserve to have their license suspended...revoked.

SENATOR FOSTER: So the only remedial action that they can order is a suspension of a license? They can't do something different than that?

SENATOR FULLER CLARK: I believe that is the only formal remedial action that they can take.

SENATOR FOSTER: Thank you.

SENATOR HASSAN: Thank you, Mr. President. By way of clarification, just because I am also on the committee, and as I'm trying to remember in response to Senator Foster's question, what I think the testimony was, is there are times when the Board actually does want to ask a physician to voluntarily give up his or her license because of some issue which might include disability or a mental health issue or some other issue that needs addressing. I believe that the distinction may be that, in the past, the letter that can be written encouraging some sort of remedial action can't require a suspension of license while the person is getting help or being evaluated. This would allow the Board to require that suspension, for instance, without that being recorded as a disciplinary action while the person was evaluated or got the help they needed. I think, if I am not being overly lawyerly about this, that might be the distinction.

Adopted.

Ordered to third reading.

HB 304-FN-A, relative to federal highway grant anticipation bonds. Finance Committee. Ought to pass, Vote 4-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 304 Ought to pass. This legislation is identical to Senate Bill 89 which the Senate quickly passed in March. This bill allows the use of GARVEE bonds in highway projects such as the much needed widening of I-93 from Manchester to Massachusetts. These bonds generate upfront capital, allowing for greater cash on hand to create and sustain construction. GARVEEs are a way for the state to finance debit by issuing notes that are guaranteed by federal highway funds received in future years. Instead of reimbursing construction costs as they incur, the reimbursement of GARVEE bonds occur when the debt service is due. This legislation is instrumental in accelerating the widening of I-93. The Finance Committee asks for your support of the motion of Ought to pass.

Adopted.

Ordered to third reading.

HB 595-FN, establishing the position of state meat inspector. Finance Committee. Ought to pass with amendment, Vote 4-0. Senator D'Allesandro for the committee.

Senate Finance

April 28, 2005

2005-1292s

08/01

Amendment to HB 595-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Position Established. There is established in the department of agriculture, markets, and food, the position of state meat inspector who shall be a classified state employee. In lieu of filling the position, the commissioner of the department of agriculture, markets, and food may contract with an outside source to provide meat inspection services. The state meat inspector shall enforce the provisions of RSA 427:1 through RSA 427:37. Said position or contractor shall be funded entirely through inspection fees and federal, state, and private grants as authorized by RSA 427:32 as inserted by section 2 of this act.

2 Costs of Inspection; Rulemaking. RSA 427:32 is repealed and reenacted to read as follows:

427:32 Costs of Inspection; Rulemaking. The cost of inspection rendered under the requirements of this subdivision shall be funded through inspection fees adopted by rule under RSA 541-A. The commissioner is also authorized to apply for and receive any federal, state, or private grants for the purposes of the costs of such inspections.

3 Effective Date. This act shall take effect July 1, 2005.

2005-1292s

AMENDED ANALYSIS

This bill establishes the position of state meat inspector. The position is funded by government and private grants and inspection fees.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, I am going to ask the Senate to vote against the Ought to pass and I will introduce another option after that. The rationale being that the Commissioner of Agricultural came before our committee and stated that this would not work. The meat inspector situation, as suggested in this legislation, would not work, would not be effective, and that, on a previous occasion, the Department of Agriculture had been in contact with the federal government and had gone through a process. It is inoperative. Thank you, Mr. President.

SENATOR EATON (In the Chair): Thank you, Senator D'Allesandro. So, what you are saying is to vote down the amendment and vote down the Ought to pass, and you will have an alternate motion?

SENATOR D'ALLESANDRO: That is correct.

SENATOR EATON (In the Chair): Thank you.

Amendment failed.

The question is on the motion of Ought to pass.

Motion failed.

Senator D'Allesandro moved inexpedient to legislate.

Adopted.

HB 595 is inexpedient to legislate.

HB 173, relative to food service and distribution. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Health and Human Services

April 26, 2005

2005-1267s

01/09

Amendment to HB 173

Amend the bill by replacing sections 4 and 5 with the following:

4 Food Service Licensure; Definition. Amend RSA 143-A:3, V to read as follows:

V. "Occasional food service establishment" means any food service establishment ~~[operated by a private or public organization or institution, whether profit or nonprofit, which prepares food or drink for sale or for service, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge, no more than 96 hours at no fewer than 3 hours a day during a 30-day period]~~ *where food is served or provided for the public on the premises of the establishment, whether or not there is a charge for such food, no more than 4 days during a 30-day period. Any part of a day shall be considered one full day for the purposes of this definition.*

V-a. *"Occasional food service events" means events which are not regularly scheduled where food is provided to participants such as extracurricular school events, non-profit sporting events, and periodic events sponsored by religious or nonprofit organizations, such as periodic church suppers, bazaars, and bake sales.*

5 Exemptions. Amend the introductory paragraph of RSA 143-A:5 to read as follows:

The following establishments *and events* shall be exempt from licensure under this chapter:

6 Exemptions. Amend RSA 143-A:5, III to read as follows:

III. Temporary food service establishments and occasional food service establishments *and occasional food service events* which are not under the jurisdiction of city or town health officers under RSA 147:1 and RSA 47:17.

7 Effective Date. This act shall take effect 60 days after its passage.

2005-1267s

AMENDED ANALYSIS

This bill:

I. Amends the definition of "shellfish" to be in compliance with the U.S. Food and Drug Administration's model shellfish ordinance.

II. Corrects a reference which is no longer applicable to food safety classes.

III. Clarifies the definition of occasional food service establishment in the food service licensure statute.

IV. Adds an exemption from licensure for occasional food service events.

Senator Martel moved to recommit.

Adopted.

HB 173 is recommitted to Health and Human Services Committee.

HB 247, extending the law regarding receivership of care facilities for a certain length of time. Health and Human Services Committee. Ought to pass, Vote 6-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. I move House Bill 247 Ought to pass. This bill extends the law regarding receivership of nursing homes and other residential care facilities from July 1, 2005 to July 1, 2010. The law is scheduled to sunset July 1, 2005. The law allows the Probate Court, upon petition from the Department of Health and Human Services, to appoint a receiver for a facility provided that the court finds that the health and safety or welfare of the residents cannot be adequately assured as a result of a facility's closure. Although

the law has never been used in the two years of its existence, it represents an effective remedy to the sudden disruption of residents, and the committee recommends Ought to pass on HB 247. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 697-FN, establishing a commission to study medicaid reimbursement rates for pharmacy providers. Health and Human Services Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

Health and Human Services

April 27, 2005

2005-1280s

01/04

Amendment to HB 697-FN

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study medicaid reimbursement rates for pharmacy providers.

Amend the bill by replacing sections 1-4 with the following:

1 Committee Established. There is established a committee to study medicaid reimbursement rates for pharmacy providers and to make recommendations relative to the appropriate methodology to be used to determine such reimbursement rates.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

II. The committee shall solicit information from the department of health and human services and from any other person or entity the committee deems relevant to its study.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee's study shall include, but not be limited to:

I. A review of issues related to medicaid pharmacy reimbursement rates including a study of past methodologies for determining such rates.

II. Making recommendations relative to the appropriate methodology for establishing future medicaid pharmacy reimbursement rates.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

2005-1280s

AMENDED ANALYSIS

This bill establishes a committee to study medicaid reimbursement rates for pharmacy providers.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 697 Ought to pass with amendment. When Medicaid recipients fill a prescription, the pharmacy receives a fee based on a formula set by the Department of Health and Human Services. The risk with the current for-

mula, which reimburses at a rate among the lowest in the country, is that pharmacists may eventually decide it is not in their interest to fill Medicaid prescriptions. A similar situation occurred due to the dental reimbursement formula, which resulted in many dentists in the state not accepting Medicaid recipients, a lawsuit and an eventual increase in dental reimbursement rates. The committee adopted an amendment that changes the commission to a legislative study and the committee recommends Ought to pass with amendment on House Bill 697. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 431-FN-L, relative to competing articles and official ballot voting. Internal Affairs Committee. Inexpedient to legislate, Vote 3-2. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 431-FN-L be found inexpedient to legislate. House Bill 431-FN would create a procedure for instances where more than one competing article passes on the ballot. The committee sympathizes with towns that find themselves in this situation. However, there was some concern over how a town would determine which articles were actually "competing." In this case, careful warrant writing may be a better solution than this legislation. The Internal Affairs Committee asks your support for the motion of inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 483, relative to instructions to be placed on the general election ballot. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 483 Ought to pass. HB 483 makes changes to the instructions on the ballot by replacing the word "any" with "not more than" designating the number of persons to be voted on. The bill is intended to make instructions clearer for the voters. The Internal Affairs Committee asks your support for Ought to pass.

Adopted.

Ordered to third reading.

HB 267, relative to requests for services other than counsel for indigent defendants. Judiciary Committee. Ought to pass, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move HB 267 Ought to pass. This bill allows a court-appointed attorney to request funding for services for an indigent defendant by filing an application with the court and addresses an ongoing problem at the Superior Court. There are any number of services that an attorney might need such as an investigator, fingerprint, psychiatric or medical expert. The bill does not require the court to approve the request for services, but does allow the attorney to build the defense case without having to prematurely let opposing counsel know the basis of the defense. Through the discovery process, everything will be disclosed as is currently required. Testimony

at the public hearing established that the courts are very frugal in allowing these services and that these requested services generally are low end costs. The Judiciary Committee recommends that the bill be adopted and asks your support. Thank you.

Adopted.

Ordered to third reading.

HB 332, relative to harassment by telephone. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Green for the committee.

Senate Judiciary

April 27, 2005

2005-1279s

09/10

Amendment to HB 332

Amend RSA 644:4, I(a) as inserted by section 1 of the bill by replacing it with the following:

(a) Makes a telephone call, whether or not a conversation ensues, ***with no legitimate communicative purpose or without disclosing his or her identity and*** with a purpose to annoy, ***abuse, threaten,*** or alarm another; or

SENATOR GREEN: Thank you, Mr. President. I move House Bill 332 Ought to pass with amendment. This legislation changes the elements for harassment by telephone and was filed because of a New Hampshire Supreme Court decision. The proposed legislation mirrors the federal statute which has been upheld as constitutional. It also adds further clarifying language relative to the call having no legitimate purpose. This clarification would exempt political calls or a wrong number call. Testimony in the committee made it clear that the intent of this bill is not to prosecute someone for harassment for making one telephone call. If someone did receive telephone calls that they felt were harassing, the person would have to notify the telephone company so that a trap could be installed on the line. The telephone company's documentation would be needed in order to go forward with prosecution. The committee amendment merely added the word "and" so that prosecutors would have to prove that the telephone call was made with no legitimate purpose or without disclosing their identity and with the purpose to annoy, abuse, threaten or alarm the victim. The Judiciary Committee recommends that the bill be adopted with amendment and asks your support. Thank you very much.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 348, relative to real and personal property conveyances made under powers of attorney. Judiciary Committee. Ought to pass, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 348 Ought to pass. This legislation was filed in order to correct legislation that amended General Powers of Attorney forms so that the statement required for these documents would not need to be included with Limited Powers of Attorney forms. Limited Powers of Attorney are most

often drawn up in real estate transactions in order to allow someone to act on the behalf of a person who cannot be present at a closing. These Powers of Attorney are very limited and written up for one specific use. Because many of the real estate attorneys had not caught this change in statute, many deeds have been filed without the disclosures. Some of these deeds are therefor flawed. The provisions of this bill accomplish two things: it clarifies that for Limited Powers of Attorney, the disclosures do not need to be included and it corrects any deeds that may have been recorded without the disclosures. The Judiciary Committee asks for your support for this important correctional legislation. Thank you.

Adopted.

Ordered to third reading.

HB 138-FN, requiring medical examiners to inventory and account for property taken from decedents. Public and Municipal Affairs Committee. Ought to pass, Vote 3-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. House Bill 138 would require that the state medical examiner's staff fill out an inventory list for any cash, drugs or other personal property belongings that may belong to a decedent. This bill creates accountability for the medical examiner's office to keep track of decedents' personal belongings. Please join the Public and Municipal Affairs Committee in voting this bill Ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 141-L, relative to the planning board's authority to limit building permits. Public and Municipal Affairs Committee. Ought to pass, Vote 4-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. House Bill 141 limits the planning boards from controlling certain developments because some local planning boards are overly ambitious and set limits for certain developers. This legislation clarifies the laws so that planning boards will not overstep their boundaries. Please join the Public and Municipal Affairs Committee in voting this bill Ought to pass, and I thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 157, establishing a commission to study procurement methods for public works projects by state and local government agencies. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Roberge for the committee.

Public and Municipal Affairs

April 27, 2005

2005-1275s

05/10

Amendment to HB 157

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study procurement methods for public works projects by state and local government agencies.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study procurement methods for public works projects by state agencies, municipalities, counties, school districts, and all other political subdivisions.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Two members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study contracting practices for public works projects by state agencies, municipalities, counties, school districts, and all other political subdivisions. The goal of such study shall be to recommend the public procurement policies that promote the best economic and work quality value from public construction and infrastructure investment. The committee shall base its recommendation on consideration of the following: labor law enforcement, workplace safety compliance, worker's compensation compliance, access to workforce and apprenticeship training, in-state job creation and community economic development, communities' uncompensated care burdens and other social welfare costs, and such additional criteria as the committee deems appropriate.

4 Chairperson; Quorum. Members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2006.

6 Effective Date. This act shall take effect upon its passage.

2005-1275s

AMENDED ANALYSIS

The bill establishes a committee to study procurement methods for public works projects by state and local government.

SENATOR ROBERGE: Thank you, Mr. President. House Bill 157 establishes a commission that reviews contracting practices for public works. The committee felt that a commission was too broad and amended the bill to become a study committee with three House members and two Senators. Please join the Public and Municipal Affairs and vote Ought to pass (sic). Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 168, relative to the licensure of electrologists and establishing an electrology advisory committee. Public and Municipal Affairs Committee. Ought to pass, Vote 3-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. House Bill 168 makes various changes to the regulation of electrologists by the Commissioner

of Health and Human Services as well as establishes an electrology advisory committee. The statute that originally created the Electrology Board gave the Board the power to create this committee and enough broad powers to create testing and licensing policies. I'd like to recommend this bill be recommitted to committee.

Senator Roberge moved to recommit.

Adopted.

HB 168 is recommitted to the Public and Municipal Affairs Committee.

MOTION TO REMOVE FROM THE TABLE

Senator Morse moved to have HB 239-FN taken from the table.

Adopted.

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics.

The question is on the motion of Ought to pass.

Senator Morse moved recommit.

Adopted.

HB 239-FN is recommitted to the Public and Municipal Affairs Committee.

HB 236, relative to the time for filing a motion to rehear a zoning decision. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Burling for the committee.

Public and Municipal Affairs

April 27, 2005

2005-1274s

10/04

Amendment to HB 236

Amend the title of the bill by replacing it with the following:

AN ACT relative to the time period for filing for rehearing or appeal of a zoning or planning decision.

Amend the bill by replacing all after the enacting clause with the following:

1 Motion for Rehearing of Board of Adjustment, Board of Appeals and Local Legislative Body; Method of Calculation Changed. Amend RSA 677:2 to read as follows:

677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions. Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefor is stated in the motion. This 30-day time period shall be counted in calendar days beginning with the date *following the date* upon which the board voted to approve or disapprove the application *in accordance with RSA 21:35*;

provided however, that if the moving party shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 144 hours of the vote pursuant to RSA 676:3, II, the person applying for the rehearing shall have the right to amend the motion for rehearing, including the grounds therefor, within 30 days after the date on which the written decision was actually filed. If the decision complained against is that made by a town meeting, the application for rehearing shall be made to the board of selectmen, and, upon receipt of such application, the board of selectmen shall hold a rehearing within 30 days after receipt of the petition. Following the rehearing, if in the judgment of the selectmen the protest warrants action, the selectmen shall call a special town meeting.

2 Court Review of Planning Board Decisions. Amend RSA 677:15, I to read as follows:

I. Any persons aggrieved by any decision of the planning board concerning a plat or subdivision may present to the superior court a petition, duly verified, setting forth that such decision is illegal or unreasonable in whole or in part and specifying the grounds upon which the same is claimed to be illegal or unreasonable. Such petition shall be presented to the court within 30 days after the date upon which the board voted to approve or disapprove the application; provided however, that if the petitioner shows that the minutes of the meeting at which such vote was taken, including the written decision, were not filed within 144 hours of the vote pursuant to RSA 676:3, II, the petitioner shall have the right to amend the petition within 30 days after the date on which the written decision was actually filed. This paragraph shall not apply to planning board decisions appealable to the board of adjustment pursuant to RSA 676:5, III. ***The 30-day time period shall be counted in calendar days beginning with the date following the date upon which the planning board voted to approve or disapprove the application, in accordance with RSA 21:35.***

2 Effective Date. This act shall take effect 60 days after its passage.

2005-1274s

AMENDED ANALYSIS

This bill changes the calculation of the period for filing a motion to rehear a zoning decision or to appeal a planning board decision to conform to the general rule for the state by excluding the date of decision from the calculation of the period.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Ought to pass with amendment on House Bill 236. This bill deals with an issue that has come before us several times in the last five years. What this bill attempts to do is finally set in the clearest possible terms, the duration and timing of the appeal period when people wish to appeal from the decisions of a zoning board of adjustment. We dealt with this issue in year 2000. This proposal completes that process. Basically what the bill, with our amendment will do, is say that all appeals from zoning boards of adjustment will be taken within 30 days, the 30 day period being counted from the day after that on which the board makes its decision. At present, that is what happens with planning board decisions and with court decisions. This will bring us, as a state, into the situation where ZBA decisions get counted from the day after. Planning board gets counted from the day after. Court decisions get counted from the day after. And hopefully, that will end the occasional lawsuits which

are raised over the duration and timing of the ZBA appeals period. With that, I ask that you join the Public and Municipal Affairs Committee in voting Ought to pass with our amendment.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 480, relative to innovative land use controls. Public and Municipal Affairs Committee. Ought to pass, Vote 3-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move Ought to pass on House Bill 480. This bill clears up some confusion relative to so-called village planning, in which there is denser planning of residential units, leaving larger areas of open space. The committee felt that the bill clarified some confusing language in existing law and I ask you to join us with the unanimous Public and Municipal Affairs Committee, in voting Ought to pass on House Bill 480.

Adopted.

Ordered to third reading.

HB 498, establishing a study committee relative to the sale of fire-safe cigarettes. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 3-0. Senator Roberge for the committee.

Public and Municipal Affairs

April 27, 2005

2005-1273s

05/10

Amendment to HB 498

Amend the bill by replacing section 5 with the following:

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2006. The committee also shall issue an interim report on or before November 30, 2005, addressing what, if any, impact the implementation of fire-safe cigarette legislation in New Hampshire would have on state revenues.

SENATOR ROBERGE: Thank you, Mr. President. House Bill 498 establishes a study committee that will look into the sale of fire-safe cigarettes. Fire-safe cigarettes are packaged differently and are designed to burn out quickly when not being smoked. This will help reduce the fires among unattended cigarettes. The committee amendment will require the study committee to submit an interim report by November of 2005. Please join the Public and Municipal Affairs Committee in voting this bill Ought to pass as amended.

MOTION TO TABLE

Senator Flanders moved to have HB 498 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 498, establishing a study committee relative to the sale of fire-safe cigarettes.

Senator Barnes is in opposition to the tabling motion on HB 498.

HB 33, relative to the study of state retainage practices. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 6-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. I got such a large blurb here. Can I begin by saying something, Mr. President? May I say something, Mr. President? This is a very important day you know. People are celebrating Cinco De Mayo day. It is celebrated only in this country to be exact. But it is that celebration, but today is a day in history, an infamy in history. This is 05/05/05 day. It won't happen for another hundred years. So we should be aware of that. Anyway, thank you, Mr. President. That is my little piece of history for the day. Senator D'Allesandro taught me well. I move House Bill 33 inexpedient to legislate. The prime sponsor spoke to the Transportation Committee chairman and asked the committee to kill the bill. The committee is simply complying with the prime sponsor's wishes. The Transportation and Interstate Cooperation Committee, asks your support for the motion of inexpedient to legislate, and I thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

HB 128-FN, relative to negligent operation of a carnival or amusement ride. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 6-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 128 inexpedient to legislate. House Bill 128 establishes penalties for reckless or negligent operation of a carnival ride or amusement ride. However, the committee feels that there are unintended consequences and it would be hard to insure that criminal liability lies only on the employee. The Transportation Committee also heard that HB 128 is also unnecessary because park and carnival operators are subject to the Department of Safety inspections and requirements and the law already provides against reckless conduct. The committee also heard from the prime sponsor that he would like the bill to be inexpedient to legislate, and we ask you to support our vote. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 268-FN, increasing certain motor vehicle fees. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. I move Ought to pass on House Bill 268-FN. Mr. President, the testimony before us was that the state of New Hampshire is currently engaged in subsidizing the replacement of lost license plates and stickers. That is to say it costs \$4 for the Department of Safety to replace a lost plate, but they are only charging \$3.50. The proposed House Bill 268-FN would allow them to charge their actual costs of replacement and, with that the Transportation Committee asks you to join us in their unanimous vote of Ought to pass.

SENATOR BARNES: Thank you, Mr. President. Senator Burling, I am on line two.

SENATOR BURLING: You are on line two of the bill?

SENATOR BARNES: Yes. What if the plate has been stolen? It has been lost, does that mean it's lost if it was stolen or does that mean it's lost?

SENATOR BURLING: I believe the language is intended to communicate gone from the possession of the original licensee.

SENATOR BARNES: Thank you.

SENATOR BOYCE: Yes, did I hear you say that replacement license plates are approximately \$4? I am curious why it is that the Senate is required to pay \$10 a pair for ours when the requirement is that we are supposed to pay the costs of our license plates. I am curious why it is that we are being overcharged on our license plates. Did you get any testimony on that?

SENATOR BURLING: You know, we didn't get any testimony on that particular subject, but since the new plates were simply so stunningly beautiful, we could only assume that there was an esthetic component to the replacement charge.

SENATOR BOYCE: Thank you.

SENATOR LETOURNEAU: I just wanted to make note that that is "per" number plate.

Adopted.

Ordered to third reading.

HB 513, relative to on-board diagnostic system inspections. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

April 27, 2005

2005-1285s

03/09

Amendment to HB 513

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Department of Safety; Duties of Commissioner; Complaints. Amend RSA 21-P:4 by inserting after paragraph XI the following new paragraph:

XII. Establish an easily accessible mechanism for citizens to file complaints with the department relating to on-board diagnostic system testing required by RSA 266:59-b. The complaint mechanism shall include either a telephone number reserved exclusively for such complaints or an Internet site for such complaints that may be accessed through links prominently displayed on Internet sites operated by the department or the state.

2 New Paragraph; Inspection Stations; Inspection Data. Amend RSA 266:1 by inserting after paragraph VII the following new paragraph:

VII-a.(a) The director is authorized to require inspection stations to submit inspection data to the department electronically, provided that if electronic submission is required the following inspection stations shall be allowed to submit inspection data electronically or on a designated schedule and form prescribed by the department:

(1) Inspection stations that are authorized to inspect only motorcycles.

(2) Inspections stations that inspect less than 200 vehicles in a consecutive 12-month period.

(3) Fleet motor vehicle inspection stations for non-OBD II vehicles.

(4) Municipal and county government inspection stations for non-OBD II vehicles.

(b) The department shall not require an inspection station to transfer inspection information electronically for any vehicle of model year 1995 or older.

3 Emission Control Equipment; OBD II Testing Required. Amend RSA 266:59-b, III-V to read as follows:

III. [~~For all model year 1996 and newer gasoline-powered and model year 1997 and newer diesel-powered motor vehicles equipped with on-board diagnostic systems meeting the federal EPA OBD II standards;~~] The commissioner, after public hearing and consultation with the commissioner of the department of environmental services and the air pollution advisory committee, and notification of the house science, technology, and energy committee and the senate environment committee, and with the approval of the air pollution advisory committee, shall adopt rules under RSA 541-A, which require ~~[every motor vehicle]~~ ***all model year 1996 and newer gasoline-powered and model year 1997 and newer diesel-powered motor vehicles equipped with on-board diagnostic systems meeting the federal EPA OBD II standards*** driven on the ways of this state which ~~[is]~~ ***are*** subject to inspection under this chapter, after a date specified by the commissioner, to be tested for OBD II indications of failures as a component of the inspection. To the extent allowed by EPA OBD II policy, OBD II data may be substituted for visual and functional tests required by paragraph I.

IV. This section shall not apply to vehicles 20 or more model years old which shall be determined by subtracting the model year of the vehicle from the calendar year in which the inspection occurs.

V. If a vehicle fails the EPA OBD II test and it passes all other inspection requirements under this chapter, then it shall be issued a temporary waiver that permits its operation for 60 days from the date of issuance, in order to make required repairs. A vehicle shall be eligible for only one such waiver during its inspection cycle. ***The department shall adopt rules, pursuant to RSA 541-A, that have the effect of establishing the broadest possible waivers for consumers consistent with 40 C.F.R. sections 51.350 through 51.373.***

VI. ***If a vehicle fails the EPA OBD II test and the owner fails to make the required repairs, the owner may not sell the vehicle without informing the purchaser of the OBD II failure. If the owner fails to inform the purchaser of the OBD II failure, the purchaser shall be entitled to a refund of the purchase price and reasonable attorney's fees.***

VII.(a) ***There is established an OBD II testing advisory committee. The committee shall be composed of the following:***

(1) ***Three representatives, appointed by the speaker of the house of representatives.***

(2) ***Three senators, appointed by the president of the senate.***

(3) ***The director of the division of motor vehicles of the department of safety.***

(4) ***The attorney general, or designee.***

(5) ***The commissioner of environmental services, or designee.***

(6) ***One member nominated by the New Hampshire Automobile Dealers Association and appointed by the governor.***

(7) ***One member nominated by the New Hampshire Motor Transport Association and appointed by the governor.***

(b) ***Members' terms shall be coterminous with their terms in office, except that members appointed pursuant to subparagraphs (a)(6) and (a)(7) shall serve at the discretion of the appointing authority.***

(c) *The committee shall:*

(1) *Review and make recommendations on any contracts between the state and any private entities relating to OBD II testing.*

(2) *Review program operations on any contracts between the state and any private entities relating to OBD II testing.*

(3) *Make recommendations for statutory changes to the amounts and types of repair waivers granted in the OBD II testing program.*

(4) *Report by May 1, 2006 its recommendation whether to extend the electronic reporting exemption for inspection stations performing less than 200 inspections in a consecutive 12-month period.*

(5) *Submit an annual report to the governor, senate president, and speaker of the house of representatives on the operation of the motor vehicle inspection and emissions testing program.*

4 OBD II Testing; Applicability. Notwithstanding RSA 266:59-b, any EPA OBD II testing required by department of safety rules prior to May 1, 2006 shall be advisory only. No inspection station shall deny an inspection sticker to any vehicle because of OBD II failure prior to May 1, 2006.

5 Emergency Rulemaking. The commissioner is authorized to adopt emergency rules under RSA 541-A to implement changes to the safety and OBD II inspection program needed because of this act. Notwithstanding RSA 541-A:18, II, such emergency rules shall be effective for 180 days. After 180 days the commissioner shall adopt rules pursuant to RSA 541-A.

6 Repeal. The following are repealed:

I. RSA 266:1, VII-a(b), relative to stations that inspect less than 200 vehicles.

II. Section 5 of this act, relative to emergency rules.

7 Effective Date.

I. Section 6 of this act shall take effect January 1, 2007.

II. The remainder of this act shall take effect upon its passage.

2005-1285s

AMENDED ANALYSIS

This bill:

I. Modifies the applicability of the OBD II testing requirements.

II. Requires the department of safety to adopt rules establishing waivers.

III. Requires notice of an OBD II failure by a motor vehicle seller.

IV. Establishes an advisory committee to review contracts and recommend legislation relating to OBD II testing.

V. Exempts certain inspection stations from any electronic data submission requirements.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 513 Ought to pass as amended. House Bill 513 as amended is the work product of both the House and Senate Transportation Committees. This bill as amended will establish OBD II testing requirements, require the Department of Safety to adopt rules that established the broadest way as possible, provide consumer protection by requiring the notice of OBD II failure by a motor vehicle upon sale, establish an advisory committee to review contracts and legislation related to OBD II testing and exempts all non-OBD II vehicles from the required testing procedure, exempts certain inspection stations from any electronic data submission

requirements. These are the things that the amendment does. The Transportation and Interstate Committee unanimously asks for your support of the motion of Ought to pass as amended. I also have a friendly amendment after we pass this one. Thank you.

Amendment adopted.

Senator Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

May 4, 2005

2005-1332s

03/04

Floor Amendment to HB 513

Amend the title of the bill by replacing it with the following:

AN ACT relative to on-board diagnostic system inspections and relative to motorcycle inspections.

Amend the bill by inserting after section 6 the following and renumbering the original section 7 to read as 8:

7 New Paragraph; "Motorcycle Only" Inspection Stations. Amend RSA 266:1 by inserting after paragraph V the following new paragraph:

V-a. An inspection station may, upon request, be designated a "motorcycle only" inspection station. A "motorcycle only" inspection station may inspect only motorcycles and shall not be required to conduct OBD II emission testing under RSA 266:59-b or to purchase or lease any equipment relating to the OBD II emission testing program.

2005-1332s

AMENDED ANALYSIS

This bill:

I. Modifies the applicability of the OBD II testing requirements.

II. Requires the department of safety to adopt rules establishing waivers.

III. Requires notice of an OBD II failure by a motor vehicle seller.

IV. Establishes an advisory committee to review contracts and recommend legislation relating to OBD II testing.

V. Exempts certain inspection stations from any electronic data submission requirements.

VI. Permits an inspection station to be designated as a "motorcycle only" inspection station.

SENATOR LETOURNEAU: Yes. I would like to offer amendment 1332s which is being passed out right now. This particular language has to do with motorcycle only inspection stations, which any motorcycle dealer would be. They don't do inspections on automobiles or trucks. We passed this particular language on Senate Bill 148 that is over in the House. We forgot to include it in the original amendment. Thank you.

Floor amendment adopted.

SENATOR BURLING: Thank you, Mr. President. Just one minor point. I know there is a tremendous amount of misinformation out there in the general public about OBD II. I want to commend our chairman for doing an extraordinary job trying to get this right. Somebody in state government is going to have to think about the responsibility of communicating to the general public, what it is that we are doing. I would also just like to say for the record, this would be a wonderful time for the

folks who do inspections to be very clear about their pricing policies. Now is not the moment to start gouging our neighbors. I have heard rumors in my own district that some have started to tend in that direction. It would be great if we could all just resist the temptation to make a fast buck off of this. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you, Senator Burling, for those kind comments. I concur with what he just said. In addition to that, I would like to point out that this is not something that any of us are happy about. This is something that is required for us to do by the Clean Air Act of 1991. We have done the best we can, working with all of the committee members and leadership to try to bring this about in a way that's consumer friendly.

SENATOR LARSEN: Senator Letourneau, the other night, last night, you gave me a demonstration of your OBD tester. This is the machine which will be hooked up to peoples' onboard computers. Your indication was that, with the press of a button, you could read out what the issues were relating to passing the emissions standards. It was a simple press of a button. If that is the case, should we be seeing any dramatic increases in OBD testing by our inspection stations given the simplicity of the test?

SENATOR LETOURNEAU: To answer that question fairly, while this is a pretty simple test with this machine here, the machine that the provider...the vendor is providing to the inspection stations in New Hampshire, is a little more...just a little more complicated than that. They have to have an online...constant online line, that goes to the internet. It is a computer. They have to enter all of the data from the automobile, including the VIN number and it brings up the...it is a computer system that works with Safety. They have to pay for that. They have to pay for the computer. They have to pay for the paper supplies, ink supplies, and it is just a little more complicated than that. But I would agree that there is no need for drastic cost increase. There should be some minor cost increase, but I agree with you that label wise, for doing the OBD II test, it doesn't take much longer to enter that data to do what I showed you the other night.

SENATOR LARSEN: Thank you.

SENATOR BARNES: Senator Letourneau, during the testimony, did we have any of these folks come in that do the inspections so they could talk about what they intend to charge or were they absent from any of the committee hearings?

SENATOR LETOURNEAU: There were some people that came in, but the Transportation chairman of the House and myself went down to a garage in Manchester and had a demonstration for the product there. We spent the afternoon talking and asking questions and how that was going to be performed.

SENATOR BARNES: I guess I didn't come across very clearly to you. Either that or I didn't understand what you just said.

SENATOR LETOURNEAU: I am sorry.

SENATOR BARNES: Did any garage owners, inspection people, that are going to be charging us, charging the people, charging our constituents for this test, did any of them come in to testify on this piece of legislation?

SENATOR LETOURNEAU: Yes, there was one...

SENATOR BARNES: Did you get a chance to ask him what they are going to charge?

SENATOR LETOURNEAU: No, I didn't ask that.

SENATOR BARNES: So what did they say?

SENATOR LETOURNEAU: I was over in the House Transportation when they were doing the hearings on the bill over there and it varied from anywhere from \$10 to \$70. It was all over the map.

SENATOR BARNES: Ten dollars to seventy dollars. Is that what I heard you say?

SENATOR LETOURNEAU: That's what I heard.

SENATOR BARNES: Does \$70 sounds like gouging to you? Is that a gouging number?

SENATOR LETOURNEAU: Yes. The person who had mentioned that figure had told the chairman later on that he had just said it because he wanted to make sure that people understood that he thought it was absurd also.

SENATOR BARNES: Oh. Thank you, Senator.

SENATOR MORSE: I would just like to try to answer that question. We did hear from some of the lobbyists that came in and told us what some of the people in the industry are doing. Some people are only going from the \$25 that they are at now, to \$29.95. Having said that, that's when they were going to pay \$3.40 for the actual costs of the GARVEE part. The negotiations have not been signed yet, I don't believe. I was there the other day, but the negotiations are signing this contract a \$5. That's what they are trying to do. Basically will they keep it at \$29.95, that group of people? I don't know. But I think this is typical New Hampshire. I think those people are going to have to go out and publicize what they are charging for this, and that's what is going to protect the consumer out there. I think that is an important piece that we left to the public to answer.

SENATOR BARNES: Thank you, Mr. President. So it's a matter of buyer beware and look out for the rip off guys and gals?

SENATOR MORSE: It is a matter of buyer beware.

SENATOR BARNES: Thank you.

SENATOR BURLING: Senator Morse, just by way of clarification and information, am I correct that moving from \$3.40 per test to \$5 was a reflection of the fact that all pre-'96 vehicles were excluded from the contract under the renegotiation?

SENATOR MORSE: Yes. And vehicles that actually could not be tested like trailers and motorcycles, there was about, if you look at today's standards, the guess was that 1.7 million registrations, 800,000 of those registrations couldn't be inspected anyways, and that's when they had to go back to Gordon Darby and it comes out that he has only got 900,000 inspections right now.

SENATOR BARNES: One final question, Senator Morse. Something I forgot to ask earlier. Are the folks who have those pre-1996 cars and aren't going to have this testing, are they going to get a lower inspection rate than the folks that have to have the test? Has that been discussed with some of these folks?

SENATOR MORSE: I would hope that the commonsense in the economy is that there are two levels of inspection, yes. I can't determine that here though. But basically, I think it is a good point that the press picks up, is that '96 on gas machines and below, and '97 on diesel machines and below, will not be inspected on OBD. It is a good thing to point out, Senator.

SENATOR BARNES: Would you believe? It's my only one I am going to use today. I promise Mr. President. But I think that all 24 of us in the chamber, will soon know that there are two rates out there. I think we will be receiving letters and phone calls, and I think maybe that's something that the press, and I hope somehow, we can get the message out that we don't like the idea of one inspection price, and for the people that don't have the automobiles being inspected that way, there is no way those people should be charged that new price because there is no extra charge for them. Somehow that word should get out there. We're going to hear about it.

SENATOR MORSE: Senator, I would believe that, but I'd also like you to know that the Senate has lead on this issue. The Senate brought up Gordon Darby and I think the Senator should be applauded. I think there are a few more things to deal with Safety, because Safety needs to definitely communicate, that's been the poorest part of this. But I think the Senate has done a great job with the House Transportation leader in leading the effort here. I just wish it communicated that way to the public, because I think that is an important piece here.

SENATOR BARNES: Thank you very much.

SENATOR LETOURNEAU: Thank you. Just one last comment. I'd like to point out that we do have an advisory committee that would overlook this program and make sure that it is functioning the way it should. Obviously, being a new program, things can crop up and this advisory committee should be able to deal with any issues that come up and offer legislators suggestions.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SENATOR D'ALLESANDRO (Rule #44): Thank you, Mr. President. Please excuse me for my inadvertent interruption of the dialogue that was taking place in this chamber. Each of you has received from me the revenues for the month of April. April is a very significant month for us. I also gave you a narrative as to what I thought of those revenues and kind of indicated each segment as to where we were doing well and where we were not doing so well. On the 11th of May...on the 11th of May at Ways and Means, we are going to have someone from the Federal Reserve Bank, from the Federal Home Loan Bank of Boston. We will have Ross Gittel and we will have Russ Thibeault to give us what they think of their appraisals of what's happening to the economy here in New Hampshire. I would hope at that point in time, that the Committee would then begin its deliberations on where we think our revenue estimates are going to be for the next two years. As all of you know, that's a very difficult process, and it is becoming more difficult every year. We, in New Hampshire, don't use a lot of outside help in terms of our forecasting. We don't have any online process, so we depend upon bringing in these experts and making our best estimates. Bringing in our department heads. I

think it is very clear, if you have been following the narratives that I have been giving you over the last two years, that one thing has been consistent, and that has been the tremendous performance of the real estate transfer tax. That tax has been the most significant revenue producer for us. It has produced over and above our estimates. Now as long as that continues to produce, that means that we are doing something here in the economy of New Hampshire. But on the 11th, we will go over our final round of estimates. We have had the best opportunity to look at these. I've been giving them to you on a monthly basis. I've been talking to Revenue Administration and department heads. They will be very significant as we review our budget process. So Chairman Morse, what we are doing in Finance certainly will be affected by what we do on May 11th. So I encourage all of you to come and, if you have input, please express that. If you have any questions or comments, I am open to those at any time. Thank you, Mr. President.

SENATOR EATON (In the Chair): Senator D'Allesandro, again, thank you for all your hard work that you put in there and extra hours, and Senator Morse also with Finance. These are two very... six to eight weeks coming up are very, very important to us.

Recess.

Out of recess.

HB 90, relative to private driving instruction and exhibition facilities. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 4-2. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I had my notes right here and they have disappeared. Okay, I am all set now. Thank you, Mr. President. Mr. President, I move House Bill 90 inexpedient to legislate. What can I say about this bill that we haven't heard before? I guess the answer is really, nothing, so I will make this very short. House Bill 90 seeks to repeal a law that we passed last year. Before we passed Senate Bill 458 there were no private driving facilities in New Hampshire. After Senate Bill 458, a New Hampshire company started building one. They have already spent over \$4 million of a \$30 million total cost of the project. Once the facility is open, it will create fifty new full time jobs with benefits and provide \$350,000 per year in tax revenue to a local community. If we pass House Bill 90, the whole project will stop and, if you will excuse the expression, "in its tracks". That is not fair to the people in the community where the facility is being built, and it is not fair to the company building the facility. I hope you will join with me in voting House Bill 90 inexpedient to legislate. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the ITL, and I do so and want to make remarks simply because I think this bill has taken on a life of its own and represents something that we all have to be cognizant of. I have struggled with my vote on this bill because I think both the people who have opposed the race club in Tamworth, and the company, have done their share of over-reaching, and I wish that were not the case. The problem with over-reaching is it creates extreme behavior. There are parts of the ordinance that was originally negotiated between Tamworth and the business that I think created a problem in terms of noise ordinance. I think it was unreasonable. I think creating that kind of over-reaching spurred the motor club company to come to the legislature with an attempt to get around what, in their mind, was a very unreasonable provision. That being said, I think that the percep-

tion in the general public is now that a large company with a vested interest can somehow come to the legislature and do an end run around local process. In reading some of the testimony before the Senate last year, it was not clear to me that all of us understood that Tamworth does not have zoning and would not be able to have input on the race club without the bill that was...without the law that was changed last year. So for that reason, because I do not...I honor this Senate and I honor this legislature, I do not want there to be a perception that businesses can come to the legislature to do end-runs around localities. I will vote to oppose the ITL with the fervent wish that none of us were in this position and that the parties involved in this, the people who have concerns about the race track in Tamworth, along with the motor club, could be working constructively to come up with an agreement that would allow a facility that I think many in the town of Tamworth do in fact want for the tax base and for the jobs, would allow it to be built. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Up until I received some information yesterday, I wasn't quite sure how I was going to face this issue. I have talked to Senator Kenney who has this facility in his district, and I have listened very closely to what Senator Kenney has had to say during the process. I received a fax yesterday, and some of you might have it. I had a few copies that were passed out. I asked yesterday to have a breakdown on how much money has been spent by this motor sport outfit that I believe their office is out of Derry. I saw in the paper where it was over \$2 million, and I said to myself, gee, it would be great to have a breakdown of what actually has been spent. This piece of paper I have, signed by the gentleman who owns Motor Sports, so I am assuming that he thought enough of these numbers to back them up if anybody should ask him. Four million one hundred thousand dollars since inception, he and his company have spent on this property. It is a darn shame that that town up there doesn't have zoning to take care of it themselves. I am guy that likes home rule. I am a selectmen, and I don't like the state or anybody else running end runs around me. But then I did a little listening and what have you, and lo and behold, three selectmen from that town came down here to this chamber and gave testimony that they unanimously, the three of them, are in favor of it. Now I ask you, all 23 of you. When you have a question about a town that you represent, don't you usually go to the selectmen or the city council? Don't you look at those people as being the "ones" that have the handle on what's going on in that town? I know I do. I rely on my boards of selectmen to help me out on situations. Well here is the board of selectmen coming down and saying, "We want it." Here is a guy, the gentleman that owns this Club Motor Sports, Inc., and if anybody wants this they can have it, \$4,100,000. That is more than I am going to make next year. I'm saying that tongue and cheek. But how in the world can I vote to shut that businessman out after that kind of an expense? Now was he misled when he spent that money? I don't know, a bill was passed last year. I don't know if it was a unanimous vote. I probably voted for it. I haven't got the sheet here, because I thought it was a great idea when we heard it on this Senate floor. But to stiff somebody out of \$4,100,000 we should be ashamed of ourselves if we do that. Because if I were a business out there, thinking about coming into Raymond and we are trying to get people to come to Raymond, how in the world do I entice somebody to come in when we are going to turn around and say, the hell with you, we care if you spent \$4,100,000. We, the legislature, say too bad. Try

again buddy, go somewhere else. So after having received this, my mind has been made up. I didn't raise my hand in caucus today. I sat there and I wanted to do some more thinking. I read this and I do believe...I don't believe I know how I am going to vote on this. I ask you all to think as a businessman having invested all that money. Thank you.

SENATOR JOHNSON: Senator Barnes...

SENATOR BARNES: Yes, Senator Johnson.

SENATOR JOHNSON: Are you aware that, if House Bill 90 passes, that the track can still go forward?

SENATOR BARNES: Well, Senator Johnson, I am not 100 percent sure that is going to happen. I heard a conversation today that these folks, I think...I don't remember what Senator told me, but somebody that was pretty close to it I believe, said that the word is that if this bill passes, that they will leave and sell their land, try to get their money back on the land that they bought. I don't know if that is true or not because I haven't talked to the owner. All I have is a piece of paper here Senator Johnson. I haven't had a conversation so I can't answer your question honestly, 'cause I honestly don't know.

SENATOR JOHNSON: That sounds like a threat to me. Thank you.

SENATOR BARNES: Could be.

SENATOR MARTEL: Thank you, Mr. President. Let me begin by paraphrasing. The last year, there are four of us who still remain here from the original Transportation Committee that voted in favor of allowing this road course, not a race track, but a road course, to be built in Tamworth. Policy-wise, we all agreed, unanimously, including the member who is no longer in the Senate, all agreed, and this Senator really dots the "Is" and crosses the "Ts" and he agreed with us that it was correct and the right thing to do to do this. This opened the door for an investment as well as for bringing, I call it "class", to an area that really needs help. And, by doing so, all kinds of jobs are brought into that area by these people who are developing this road course. Now we have the lobby against the road course. We have the investment of the corporation of \$4.1 million who, based on our decisions here in this Senate and in the committee, that they could go forward and they could begin to build a road course and move forward. Once again, not a race track, a road course. I even asked the question once if my car qualified to go on the road course, my old one. It is no longer with me. But I was told no. But the issue is, that these people did everything they could to work with the town, and had the agreements with the town to move forward as well. Now I am going to stand on conviction, and I know everybody else will as well, to vote your consciences, but I am going to support the ITL motion on this bill because it is the right thing to do. We talk about how great our numbers are coming in to our budget. Just think of what kind of message this will give across the business world if we pulled the plug and the rug out from under this company. That would be the worst thing that could happen to our economy in certain parts of the state. It could have a detrimental impact across the entire state. I'm not about to take that chance, and I am going to vote to ITL this bill because it is the right thing to do. I thank you, Mr. President, for the time.

SENATOR LARSEN: Thank you, Mr. President. I actually come to a very different conclusion and believe that passing House Bill 90 is the right thing to do. What we did last session, was in fact, to undermine local

decision making. In testimony before the committee, there was evidence that a number of the local decision makers sought to have environmental impacts for example, reviewed. Rather than address those things as proper and as precedent at the local level, I believe that we mistakenly passed a bill to exempt this particular business entity from local decision making. The real danger is the precedent we set. I think probably everybody in this room has heard from one of your towns, concerned about the precedent that, if you don't like what's happening at the local level, just come on up to the state Senate and we will fix it for you. That's a concern. That is a precedent we are setting. I am not sure you want to be reacting to every request that comes once we set that precedent. So I am going to be voting for House Bill 90. I realize that everyone comes to their own conclusion on this, but in my mind, the precedent that it sets is more important. I have to say that clearly, there are concerns obviously when a particular developer puts money into a project. But the evidence that I received from Tamworth is that the town and the developer were negotiating in what the town considered to be good faith prior to the passage of RSA 287 and could continue to do so with House Bill 90 passed. So House Bill 90 simply returns this decision back to where it should be. I say let's turn it back to the folks who have to live with this decision for a long time to come. Keep it local decision making and support the towns who have concerns around this state by voting to pass House Bill 90.

SENATOR BOYCE: Thank you, Mr. President. I rise in favor of the motion of ITL. One of my reasons is that I know that the nature of this facility that they wish to build up there is non-intrusive, it is not what a lot of people think of when they **TAPE CHANGE** Loudon to use...they used some of the road area there to do some of the same sorts of things to learn their driving skills. One of the groups I believe, is the BMW Club. Another is a Porsche Club. I believe the BMW Club this last Monday, was doing one of their activities there. The reason that I know that is because, as I was driving down from my district, I saw a large number of BMW's dressed out for performance purposes driving in that direction. I saw them pulling into the parking lot up there. I happened to stop at the convenience store across the road from the Loudon Race Track. Now this is the real race track. This is a real honest to goodness race track that seats 90,000 people or so on a summer day. But this group had a very small number of people, small number of cars, maybe 20 or 30 cars with drivers and passengers associated with it. As I was standing there at the convenience store, having bought my gas and lottery ticket to fund the education, I was standing there and I was listening to see if I could listen and hear any of the obnoxious sounds that people think that this type of activity will cause. I was able to, for a few seconds, actually hear one of the cars on that track operating, but I had to wait until all the traffic on Route 106 was done. There couldn't be any cars or trucks driving by because I certainly could not hear the cars on that track over the highway noise. The highway noise was much louder than the noise emanating from that activity. That is the situation that you will find if you go to Tamworth when this facility is up and operating. You will find that it will be hard to tell if you're hearing one of these vehicles on there or a motorcycle a mile down the road, or somebody's lawnmower or garden tractor or something else in the area or a chain saw. So this is not an intrusive situation. The other side of the coin is that these cars that were driving to that facility, I saw others that hadn't yet made it there, parked in front of restaurants on Loudon Road. They were eat-

ing breakfast before they went there. I am sure when they left, they stopped and dinner on the way home. A lot of them probably left and came out and had lunch somewhere local. They are helping the economy. These people are not afraid to spend some money because obviously they bought a BMW. They bought a Porsche. Those are not inexpensive cars. They have the wherewithal to do these things, and they will bring benefits to the local economy, which is the reason for going forward with this project up there. I am all in favor of that. I know that the selectmen of the town are in favor of it. I have questions about the group that is so vocally active against it. I have questions whether they have actually registered with the Secretary of State and are legally doing what they are doing, having raised enough money to hire a lobbying firm. I have questions whether they're actually from that area. I have questions that they are actually local. So I have a lot of questions on that side, but I know that the benefits of this facility will be very good. I believe that the people in Tamworth have control over what's going on there. They have enacted a noise ordinance which I think is reasonable. Maybe the decibel limit is not reasonable, but it's reasonable to look to enforce a noise ordinance. They have that ability. They have done it. They have the ability to regulate what is going on up there in their control. This is not taking away their local control. We are simply saying that they can't treat this facility the same way that Loudon would treat the race track. There is a huge difference. When you've got 36 cars with 800 horsepower motors all going in unison in an oval for several hours at a time, that is a much different activity than the activity that will be at this facility. It is correct what we did last year, to define that this type of operation is not a race track. It is not the Loudon Race Track. It's not the Star Speedway. It is not the Epping Drag Way. It is none of those things. It doesn't have the large groups of spectators. It doesn't have the traffic congestion involved with those, and it doesn't have the noise involved with those. So for those reasons, I am going to vote for the ITL motion.

SENATOR JOHNSON: Senator Boyce, I will ask you the same question that I asked Senator Barnes. Would you agree with me that the motor sports park can still go forward even if we pass House Bill 90?

SENATOR BOYCE: I am not convinced of that, no.

SENATOR JOHNSON: You're not convinced of that?

SENATOR BOYCE: I am not convinced of that.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in support of House Bill 90 and in opposition to the motion on the floor. I am here to say that I disagree with Senator Martel, respectfully, when he says, "think what kind of a message our vote today will send to business." I think the important thing is what kind of a message today is our vote going to send to local communities. I believe that this is a local issue. I believe that there was a tremendous amount of work that was done on behalf of the two entities early on in this process to arrive at a solution. I think it is important to point out that when the memorandum of agreement was passed, it was passed three days before a vote came when passing zoning for the town of Tamworth. They felt that they no longer needed to pass zoning for the town because they had already agreed to this memorandum of agreement. And that they, the members of the community, were unaware of the fact that the legislation was being filed here in Concord, until after it had been passed last year. I do not believe that that was an open and fair process. I am not here to debate the merits of the race track or what the race track is or is not. What

is important here is to look at the role that our legislature has taken in regard to what should be an issue that is decided at the local level. If the motor club entity believed that they were being unfairly hampered by the agreement that was passed, they had the opportunity to pursue legal recourse. That is how, when there are conflicts between development and local communities in other parts of our state, that they are normally dealt with. The idea that they would come to this legislature and ask for a redefinition, that would in a sense, give them carte blanche because they knew that the zoning request had been defeated at the local level, but I think with a lot of misunderstanding on the part of the community. All of the letters and emails and phone calls that I have received testify to the fact that most members of this community have reservations and concerns, and I think that they should be worked out at the local level. By passing House Bill 90, I agree with Senator Johnson, that they can continue to be worked out at the local level. That is the process that we should honor, and that is why I am in favor of passing House Bill 90. Thank you.

SENATOR BURLING: Thank you, Mr. President. I have agreed with so much of all that has been said. I am going to vote in favor of House Bill 90, and I am going to do it by keeping my focus on the future, rather than looking to the past couple of years. I do that because I think frankly, there is no solution to be found in what's happened in the last two years. Neither is there a solution to be found, Mr. President, in demonizing anybody in this process. First and foremost, I want to say that I believe all the people of Tamworth have the right to speak out on this issue. They have a right to assemble, they have a right to congregate, and they have a right to address us about their concerns, because every concern they have raised has been legitimate. It has been about real issues that affect their neighborhood. It is not about demonizing the people who want to build and run this track. Because I will tell you in all candor, they are smart, charming, capable, thoughtful business people, who have defined a really kind of exciting thing to do. If it were my choice to make, I would love to get in my car and go over there and try it out. What it is about is taking whatever step we can to help these interest groups come together to find a solution. I think the best thing we can do right now is to pass 90 and to ask each and every participant in this process, at the local level, to work for a solution. What is it that divides these interest groups? Concerns about noise. It is clear that noise is an issue. And each side struggles with distrust, uncertainty, and a current inability to figure out how they can come to the table and talk about their concerns. Each side needs support in doing that. It is also about the preservation of the environment. There are concerns about MBTE and how that might affect water supplies. That is a legitimate issue. But one thing that is absolutely clear to me, Mr. President, is, given the opportunity to talk this stuff through in a clear negotiation with the able advice of their counsel, they could figure out how to do this, and they ought to be given that opportunity. I am going to make my vote, but absolutely in the back of my head is a prayer that whatever my vote is, they get the chance to work this out, because the people of Tamworth, I am convinced, have spoken twice that, while they don't want zoning, they do want regulation. I suspect that the majority of them do want the jobs, the tax base and the cash that this kind of investment would mean for their community. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I rise to support the motion of ITL once again. I want to talk a little bit about Senate

Bill 458 and how we got here. Senate Bill 458 last year was passed to make a definition of a new type of business that was coming into our state. It was very clear from the outset that this private facility was not the same thing as the race tracks that we have, and there was no place in law to define this new business. That is what we did. We cut out and defined what this business is and does. Moving ahead and forward to the committee hearings that we had in the Senate this year on House Bill 90, numerous people testified in opposition and in favor of the bill. But clearly, the House Municipal and Government people testified and said that they had made a motion of ITL and they gave us good reasons why. Both of the members of the committee that testified were both local officials from their towns; one of them from my home town. Two selectmen from the town that is affected testified and had a letter from the third saying that they are fully in support of this project and they speak for the people of Tamworth. Additionally, towards the end of the testimony, the CEO of Club Motor Sports testified and he resonated with me, and I asked him to write me a letter to put his words back into a letter that I could articulate to this panel. To us here, the 24 of us sitting here. I am just not going to read the whole letter. I'm going to read the part that really sticks out in my mind. "As I think about House Bill 90, I keep coming back to the message that this bill sends to business who are looking to invest in New Hampshire. Since the passage of Senate Bill 458 last year, CMI has invested \$2 million into the project. If 458 had not been passed, I am certain that the investment would not have been made. CMI's investment was based on the fact that the New Hampshire legislature passed Senate Bill 458." Then he goes on to say that "all businesses, especially businesses which are based on major financial investments, need stability from government. If House Bill 90 were to pass, it would not only deprive CMI of its reasonable investment backed expectations, but it would send a terrible message to any business which is thinking of setting up shop here in New Hampshire. The sort of long range investment which CMI investors have made in this project might be made next year by a high tech or a bio tech company. Those investors are going to want assurances that the New Hampshire legislature will not pass a law one year and change that law again the next year." Thank you very much, Mr. President.

SENATOR FULLER CLARK: Senator Letourneau, are you aware that, despite the vote of the Municipal and County Government Committee, that House Bill 90 was passed in the House by an overwhelming vote of 273-76?

SENATOR LETOURNEAU: I am aware of that.

SENATOR FULLER CLARK: Thank you.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. We've heard a lot of present day problems with this situation. I would like to give a little bit of history if I may. I know it has been said before. I was on Transportation a year ago and we were asked to make a new definition for this road race, this road track. The reason we did this was...and you have not been told the reason is because, they will not need bleachers. They do not need a parking lot. They are going to have houses, condos probably on this site. There is none of that in Loudon. And the people that are going to develop that stuff have \$4 million invested said we want a specific of what we are going to do in Tamworth so the people in Tamworth will know what we are going to do. Now everybody who

knows me here, there is nobody in this Senate that believes more in local control than I do. You've heard me say it in this room before. I am going to say it as long as I can. They had local control. They've had a town meeting. They've had a town meeting and they passed a sound on this. That is local control. We passed this a year ago. We said, here it is. This is what they are going to build. Now all the people who are all upset in Tamworth it doesn't take much to get a warrant article into a town warrant, a couple of signatures, and they could have zoning, they could have disbanded the thing, they could said it is upside down. They could have done anything they wanted to do last March. That is home rule. That is local control. We are not taking local control away from anybody. The town of Tamworth didn't want to do anything except pass a sound on this. They had the situation. They had the problem. If they think it is a problem, they went to the town meeting, they passed their ordinances and here we are today. Nobody did anything wrong. Nobody took any power away from anybody. We did it just the way we were supposed to. We were asked to define a new situation that was coming to New Hampshire. We defined it. The reason that I know that I am right is because it is one of the few times that Senator Below and I agreed, and Senator Below researched this thing and damn it, it's right. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I just rise to say that reliance runs both ways. I agree that it is not a good precedent for businesses to perceive that the New Hampshire legislature will pull the rug out from under them. Nor is it good precedent for localities to believe that the New Hampshire legislature will pull the rug out from under them. And in this particular case, it appears to many of us that the locality believed that it had an agreement with the Motor Club Corporation before we passed the bill last year redefining a race track. And it is for that reason, it is the perception that somehow everybody had agreed to operate under one set of rules, and then that the rules got changed at the last minute. That is the thing that most concerns me as a member of this chamber. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. Senator Hassan, do you agree that the selectmen were involved in this, all the way through? So that when you say that there is a problem in the town, the select people, the people who run the town came to us a year ago, came to us this year and said, "we want this", "we want this definition". And one selectman testified this year that "we knew that once you passed that there would be local control." One of the selectmen testified to that. So do you realize the selectmen did know it? That they did agree with it? That they want this defeated?

SENATOR HASSAN: Senator Flanders, I was not here last year. I have only read part of the records so I cannot speak to it as fully as you can. But I...and I am aware, I did hear, and have observed selectmen this year speaking in favor of what happened last year. All I can say is that there is an equal perception among people who have contacted me who are not selectmen, who do not feel that the whole town is being represented. And again, I go back to the perception that concerns me that somehow this legislature was used in a way to allow the locality to avoid the full and robust discussion that it needed to have. So that is the reason for my vote.

SENATOR JOHNSON: Thank you, Mr. President. As the former Senator in district 3, I have had the opportunity to talk to a lot of people that I got to know when I was a Senator in that district, also, the current

sponsor of the bill and the co-sponsors, and they all agree that the track can go forward. So I don't think the question here today is that we are trying to stop the track. I think the question is local control. And it is not only about Tamworth, it is about many of the other cities and towns who are out there waiting to see what we are going to do relative to local control. That is what it is all about. Thank you.

SENATOR KENNEY: Thank you, Mr. President. This is my district. I was about to say that I have a sports car that I paid off last month and I would like to take a Rule #42, but I will not. This has been a very emotional issue for my district, for my area. I didn't really come to my conclusion on how I would vote today until about a week and a half ago. But to speak to House Bill 90, we've asked both of the lobbying groups, the two most powerful lobbying firms in this state, to get together, hash out our differences and try to go forward with that, with some type of solution. I have been told no side wants an amendment on this bill. They want it voted up or they want it voted down. So that is what you are going to get today. It is going to be up or it is going to be down. And again, it took about a week and a half ago before I came to my decision. But let me explain to you...well first of all I want to thank all the people who have written to me. All the people who have phone called me and all the communities who have contacted me in regard to House Bill 90, and in regard to the issue of local control. They have given me some insight and some perspective because, as I vote today, I am voting on a statewide policy. I am not voting on a community. Because we really are voting on a statewide policy. It is not about a project in Tamworth that we're voting on. We're voting on a statewide policy. It is talking about who should regulate this type of new facility. I was on Transportation last year. When I was on Transportation, I was excited about this legislation. We were going to define a new recreational type of facility in the state of New Hampshire. It was going to bring jobs to New Hampshire. It was going to bring jobs to that area of New Hampshire. If you know that part of the state, Mount Whittier, you know it has been pretty dormant for about thirty years. In the late sixties, early seventies they had the gondolas, they had the ski resort up there, it was wonderful. I enjoyed it as a kid. It has been dormant. And yes, I support the project. I have always supported that project. Earlier on there was questions about what it was and how was it going to hurt the environment. I've got a letter here from George Bald that said, "While our agency is not taking a position on the race track at this time, I hope the town will fully consider the impacts of this land use on community and the regions as you deliberate the proposal. Specifically, I would urge you to strongly consider the information and concerns presented to you from various organizations such as the Tamworth Foundation, Green Mountain Conservation Group, the Society for the Protection of New Hampshire Forests and many other groups." Now at that particular moment in time in 2003, we knew that this project was being talked about and that there was going to be a lot of impact to that particular mountainside. I said at that time, "I support this private venture. This economic development. They have a right to do what they think is...what's good for that site." With that, the only thing that I caveated with that was that it would be environmentally sound and that it would meet all the state permitting. The state permitting they have gone through. They have met most of the permitting up to this point. So they are on their way. But it is...I also know that there was concern in talking to Commissioner Nolin, that when going through that permitting process, they meet the science. That

they definitely meet the science of that project. There was concern that there was a lot of earth that was going to be moved around. And from the local standpoint, there was concern about, well, if you start the project, you'd better finish it. So what about bonding? That was thrown out. That to me, made sense. I support the project. It is environmentally sound, and that they complete the project. I have said that from all along. But here is the thing. That ultimately, this got out of control, this issue. At the end of last year's session, there was concerns about the RTO that had passed the local town. The race track ordinance. That race track ordinance was passed in March of last year. It basically really restricted the developer as far as carrying out what he felt he needed to do with this private driving exhibition facility. I concurred. I think the noise decibel level was a little bit too restrictive, a lot restrictive actually. I think that that's really where the conflict started. They came to the legislature, a local control issue, and we came to the legislature for the state government to broker or referee that dispute. We did that. However, I was not conscious, or I should say that I was not overly aware of the impact of the second part of Senate Bill 458. I take all responsibility in the world for that oversight, as far as what was taken away from local communities. I offered an amendment last year at the Committee of Conference. I said, "Listen, I've got an amendment here to study a private driving instruction exhibition facility. There will be three members of the Senate on this committee. There will be two members of the House. There will be an appointee from the Attorney General. There will be an appointee from the Commissioner for the Department of Safety, the Commissioner from the Department of Resources and Economic Development. The legislative members will meet and that they will make a report and that report will come out by November 1, 2004." What I was trying to do is say that local control, that there was an issue about it. That we needed to study it over last summer, and to figure out if we had truly taken it away or if there was another way, that we need to make sure that it was intact. It was defeated. Last year I knew, in May of last year, that we would be right back here a year later, talking about this issue. Here we are. But again, my view on this really changed a week and a half ago because there was a lot of information that I felt that could have come into last year's committee hearing. One of them was the Dalton Private Driving Exhibition Facility that exists in Dalton as I describe it. But basically what it is, it's a rallying car facility that also is a car control center. Here is a map of it. The only difference, when you look at what we passed last year in the definition, is that it is not paved. But if this were paved, this would be a private driving exhibition facility. That experience, of a community in Dalton, New Hampshire which has no zoning, which is a small community, a New England community that is in the White Mountains. That experience was not shared with the legislature. That experience would have been extremely helpful to weed out some of this process. That experience of Dalton is not overly undifferent (sic) or unlike what we see going on in Tamworth with CMI. Now CMI's proposal is going to involve membership, which is different in Dalton. It is going to involve hotels, which is different in Dalton. And it is probably going to involve some other type of amenities, gift shops, maybe swimming pools. But take that all away and it is not that much unlike Dalton. It's a track. They handled whatever indifferences that they had in Dalton, they handled it at the local level. They didn't come running to the state government to try to referee their economic development program or project. They handled it right there. And they handled it

probably because the community wanted it or at least most of the community. There hasn't been too many concerns that I am aware of. There have been environmental concerns of probably wetland permits as they have expanded that track, but they have resolved that at the local level. So, the Dalton experience should have been our experience. I believe that Dalton is one of those projects that we could have learned a lot from. Now I will say this. The board of selectmen in Dalton wrote me a letter saying they support House Bill 90. Why did they do that? I can only imagine if this is paved that suddenly they would feel like suddenly it is a private driving exhibition facility, so they are getting a little oversight of this facility. Maybe that is one of the reasons why they wrote it. I don't know. But here is the difficulty that I have, is that I respect the developer and how much money that he has put into this project. Millions. He has provided jobs, some jobs in the area. He has provided a lot of hope for the area. But when it comes right down to it, there has been some bad advice that has been shared here in the last year. In May of last year, they knew that House Bill 90 was coming. The local legislators in that area of the state that represent Tamworth, at least most of them, not all of them, said that they were coming in with a total repeal, that they are going to repeal Senate Bill 458. So if you understood that as a developer, and you knew that last year, May of last year, would you have spent the \$2 million in the last year? I don't know. But there was an understanding that we will be able to defeat this. The legislature has made up its mind on this issue and we will go forward. My feeling is that my study committee from last year would have resolved a lot of hate and discontent on this issue. It was rejected. With that, I am in a situation that I grew up in a small town. I grew up in Carroll County. I grew up with a father who ran a restaurant. He raised five kids and they knew the value of a dollar. So don't, Mr. Developer, or Mr. Whoever out there, tell me that I am anti-business. I came from Carroll County from a family who developed a small business. I understand that there are important jobs at stake here for my area, but ultimately, it is about the process of what I think that local communities deserve. And I was...last year, I had it wrong when it came to the local aspect, and I tried to correct it at the end of the session. It was defeated. This year, I am going to support House Bill 90. But it is not because I am anti-business. It is not because I don't support the race track. It is not because I support focused Tamworth, because they ran a candidate against me for state Senate last year. So I am not in any camp. I am not this camp or this camp. I am doing what I feel is right to represent this issue, and it is the will of the people. The will of the people, whether you look at the RTO vote, which I think was somehow stacked in the first vote, but if you look at the second ordinance vote of 65 percent here last March. That was a true indication, in my judgment, of the community of Tamworth, and what they wanted to see, is a regulatory oversight of the noise in that community. That, to me, was a true vote. And because of that, the will of the people dictate, state legislature gives the powers to the communities, we can take them back, but ultimately, at the end of the day, it is the will of the people that rule the day. And so with that, I will be supporting House Bill 90. It has been my most difficult vote here in the last eleven years, but ultimately, I am going to go home tonight and sleep well, and say I did the right thing.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Green.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Boyce, Flanders, Roberge, Eaton, Bragdon, Foster, Clegg, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse.

The following Senators voted No: Johnson, Kenney, Burling, Green, Odell, Gottesman, Larsen, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 138-FN, requiring medical examiners to inventory and account for property taken from decedents.

HB 141, relative to the planning board's authority to limit building permits.

HB 157, establishing a commission to study procurement methods for public works projects by state and local government agencies.

HB 195, establishing a committee to study the department of insurance.

HB 210-FN, relative to the determination of absence and return of contributions of members of the retirement system.

HB 216-FN, relative to the authority of the New Hampshire retirement system to purchase supplies and services.

HB 236, relative to the time for filing a motion to rehear a zoning decision.

HB 247, extending the law regarding receivership of care facilities for a certain length of time.

HB 267, relative to requests for services other than counsel for indigent defendants.

HB 268, increasing certain motor vehicle fees.

HB 293, establishing a commission to study the feasibility of developing a materials resource and recovery facility in Sullivan County.

HB 304-FN-A, relative to federal highway grant anticipation bonds.

HB 332, relative to harassment by telephone.

HB 348, relative to real and personal property conveyances made under powers of attorney.

HB 386, relative to agricultural best management practices.

HB 389, relative to the duties of the postsecondary education commission.

HB 411, relative to the North Conway water precinct.

HB 414, relative to regulation of municipal waste combustors.

HB 465-FN, authorizing the board of medicine to take non-disciplinary remedial action against physicians.

HB 480, relative to innovative land use controls.

HB 483, relative to instructions to be placed on the general election ballot.

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services.

HB 513, relative to on-board diagnostic system inspections.

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

HB 697-FN, establishing a commission to study medicaid reimbursement rates for pharmacy providers.

ANNOUNCEMENTS

SENATOR JOHNSON (RULE #42): Thank you, Mr. President. I just want to make a comment on Senator Martel's earlier addressing us about the date today. I was just thinking if you were still running the numbers, 555 would be quite a number.

SENATOR MARTEL: Just let me look. Hold on. No, I don't. But I will play 555 tonight Senator.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 41, relative to penalties for certain OHRV violations.

SB 49-FN, including multiple sclerosis in the catastrophic illness program.

SB 55, relative to the New Hampshire film and television commission and state promotional initiatives.

SB 59, relative to the general powers and duties of guardianship.

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act.

SB 98-FN, relative to issuing duplicate registrations for off highway recreational vehicles.

SB 106-FN, making unauthorized recording in a motion picture theater a crime.

SB 112-FN, establishing a committee to study viatical settlements.

SB 126, establishing a committee to study the appeals process in cases between landlords and tenants.

SB 171, establishing a committee to study HIV/AIDS service delivery.

SB 182-FN, relative to electronic issuance of warrants.

SB 226, relative to the regulation of snowmobiles and off highway recreational vehicles.

SCR 4, a resolution supporting federal funding for Lyme disease research.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 86, relative to property held in police department property rooms.

HB 97, relative to replacing school budget committee members.

HB 263, relative to the use of design build and construction management methods for state capital projects.

HB 280, relative to the manner of service in divorce and child custody proceedings.

HB 303-FN, relative to the fire standards and training commission.

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association.

HB 469, regulating disputes between homeowners and contractors relative to residential construction defects.

HB 512, expanding the study committee on property tax relief to include reverse mortgages.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 99-FN, relative to the penalty for failure to file a property inventory form.

SB 101-FN, relative to developmentally disabled services for persons under 21 years of age.

SB 102-FN, limiting liability for failure to arrest persons under 21 years of age illegally transporting alcoholic beverages.

SB 119, establishing a committee to study exempting acute care rehabilitation from the nursing home moratorium.

SB 183, authorizing licensed medical adult day program facilities to assist clients with medication.

SB 195, relative to the effective date of the law requiring the elimination of certain substances from gasoline supplies and removing a certain requirement relative to opting out of the reformulated gasoline program.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 27-FN, relative to an exemption from the annual inspection of health facilities.

SB 42, establishing a pharmaceutical study committee to study direct purchasing of prescription medication by the state.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 617-FN, establishing a commission to study the future role of court reporters in New Hampshire's court system.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 617, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 617-FN, establishing a commission to study the future role of court reporters in New Hampshire's court system. (Internal Affairs)

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HB 691-FN-L, relative to the medicaid program.

INTRODUCTION OF HOUSE BILL(S)

Senator Flanders offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, House legislation numbered from HB 691, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

HB 691-FN-L, relative to the medicaid program. (Health and Human Services)

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 20-FN, relative to an increase in lottery ticket prices.

SB 40, permitting special school district meetings to be held in conjunction with the biennial election in certain school districts.

SB 45-L, relative to the Hanover school district tax stabilization fund.

SB 58-FN, making certain changes in the workers' compensation law.

SB 65, ratifying changes to the state building code adopted by the state building code review board.

SB 87, relative to extension of tax liens by the department of revenue administration.

SB 117-FN, relative to utility property tax appeals.

SB 120, relative to the purchase of rail properties.

SB 138-L, relative to motor vehicle liability for municipal workers.

SB 141-L, authorizing the establishment of certain reserve funds by the Gorham, Randolph, and Shelburne school districts.

SB 164-FN, relative to the disposal of real property purchased with highway or turnpike funds.

SB 167, relative to extension of guardianship.

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua.

SB 202, relative to property taxable as utility property.

SB 208-FN, relative to certification of driver education instructors.

SB 212, relative to the railroad tax.

SB 219-FN, relative to examinations under workers' compensation.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

SB 138-L, relative to motor vehicle liability for municipal workers. Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 401-FN-A, making an appropriation to the Seacoast Shipyard Association.

SB 112-FN, establishing a committee to study viatical settlements.

SB 126, establishing a committee to study the appeals process in cases between landlords and tenants.

SB 171, establishing a committee to study HIV/AIDS service delivery. Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 38, relative to theft of personal checks and credit cards.

HB 71-FN-A-L, relative to funding of the school building aid program for the 2005 fiscal year and making an appropriation therefor.

HB 144-L, relative to special elections for municipal charter amendments.

HB 147, relative to the death penalty.

HB 265, relative to minutes of land use board meetings involving developments of regional impact.

HB 499, relative to participation in and administration of the Manchester employees' contributory retirement system.

HB 521, relative to medical insurance coverage for members of the Manchester employees' contributory retirement system.

HB 532, relative to the licensure of dentists by the board of dental examiners.

HB 546, relative to the status of the board of trustees of the retirement system.

Senator D'Allesandro moved adoption.

Adopted.

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

May 12, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend Heath Howe Civetta, Co-Rector of Saint Paul's Episcopal Church in Concord, guest chaplain to the Senate, offered the prayer.

TAPE INAUDIBLE the agenda, you know. And he said, "Oh, I'll find out. Then he said, "Oh, you know, nothing really very hot or controversial or anything." So then I said okay. So then I asked for the people and then said, "Oh yeah, it's going to be an easy day. Sort of a basic agenda." So I brought my coffee because I didn't know if everybody would be asleep when I got here. And being a Generator X person, I had my freshly ground Starbucks with me. But I wonder how it is you find yourself and what you bring into this room today. How you find yourself in a day of a basic agenda. Kind of an easy day with some guests, and I wonder how you find your spirit. I wonder if you find yourself curious. I wonder if you find yourself a little bit bored. I wonder if you find yourself sort of relaxed. As Christians this time of year, particularly on Sunday, we are going to celebrate the season of Pentecost, when we remember the Holy Spirits and how the Holy Spirit doesn't really care what's on the agenda, and that the most mundane ordinary, basic days might be filled with something quite extraordinary. And I wonder if you will find that today. The Lord be with you.

Let us pray: Loving God, we thank You for this day. We thank You for opening us up to see Your work in the world about us and whom we live, and move, and have being. We thank You for waking us up. For bringing us here full of wonder, curiosity, boredom, relaxation, duty, responsibility. Whatever it is that drives us, we thank You. For it has caused us to wake up and to be here. And once awakened, we might begin to see that the transcendent in the ordinary happens, and we might recognize that the dullest circumstances may unexpectedly be shot through with fire. May we not miss it. Amen

Senator Martel led the Pledge of Allegiance.

Senators Bragdon and D'Allesandro are excused for the day.

INTRODUCTION OF GUESTS

SENATOR EATON (In the Chair): Our thoughts and prayers go out to Senator Bragdon's dad, Robert Bragdon of Amherst. We want to...we will be thinking of him as we go through the day. We will be getting an email out to you regarding arrangements. Senator Bragdon was here most of the day yesterday.

SUSPENSION OF THE RULES

Senator Kenney moved that the rules of the New Hampshire Senate be so far suspended as to permit HB 582 to be vacated from the Committee on Executive Departments and Administration to the Committee on Energy and Economic Development after a hearing has been held.

SENATOR GREEN: TAPE INAUDIBLE

SENATOR KENNEY: I would probably refer this to the committee that heard it, but it is my understanding it's a municipal bill that deals with records that the Secretary of State was looking to have addressed and I defer any other comments to Senator Odell.

SENATOR ODELL: Thank you, Mr. President. The hardworking Energy and Economic Development Committee received this bill at the request of...it was put in at the request of the Secretary of State's Office, and it deals with definitions in the current law. It is some definitions that have not been changed in something like 25 years and includes words such as "electronic recording" that is currently not in the law. So it is all about technical changes in the law governing public records at the state level.

Adopted by the necessary 2/3 vote.

HB 582, relative to the policy for records management is vacated to the Energy and Economic Development Committee.

COMMITTEE REPORTS

HB 342, establishing a commission to study the barriers to the establishment of all-terrain vehicle trails on public and private lands. Environment and Wildlife Committee. Inexpedient to legislate, Vote 4-1. Senator Gallus for the committee.

SENATOR GALLUS: Thank you very much, Mr. President. I move House Bill 342 be found inexpedient to legislate. House Bill 342 sought to establish a commission to study barriers of all-terrain vehicle trails on public and private lands and how they would be addressed. However, the availability of funds to pay for this commission are in question. For this reason, the Environment and Wildlife Committee asks your support for the motion of inexpedient to legislate. Thank you.

SENATOR LARSEN: I rise to oppose the inexpedient to legislate motion and suggest that...I have a floor amendment, 1411 to House Bill 342, to, in essence, take out the Senate members. We have heard from House members of the interest that exists to have this commission study the barriers that we all know exist. ATV trail locations are in fact controversial enough that it would make sense to have members and representation from different parts of the state. Representatives sit down together and try to agree upon a plan of action for the use of the ATV funds, which we all know are collected, but difficult finding a location for the trails. So this...because the Senate oftentimes says that their main problem with the study commissions is, it is in fact, too many committees for a Senator to attend. This would take the Senators off, but allow the commission to continue. So it is a very simple amendment and deleting the section II of the bill relating to the membership of the Senate. Do we have that floor amendment distributed?

SENATOR EATON (In the Chair): We can't pass it out unless the committee recommendations overturned.

SENATOR LARSEN: Correct. Thank you. So, I just move that we vote no on ITL to allow for this simple amendment which restores the commission, but deletes the Senate members.

SENATOR JOHNSON: Mr. President, may I speak to the bill? Thank you. I spoke to Paul Gray, who is the trail person at the Department. He said that we had had three public hearings and we had three times that they have studied this bill, and the Department, as I got the information from him, did not take a position on the bill. So I wanted this body to know that. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 343, establishing a commission to study accessibility for New Hampshire citizens to the water bodies in the state. Environment and Wildlife Committee. Inexpedient to legislate, Vote 5-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 343 be found inexpedient to legislate. House Bill 343 would establish a commission to study certain issues relative to accessibility to New Hampshire citizens for non-motorized recreation. Areas of concern were access to lakes, access to individuals and various drawbacks including toxicology and mercury content. The Public Water Access Board was without a chairman for a year and a half, so it was felt this bill would be necessary. They are now a very active board and will be addressing these issues, so a commission is no longer necessary at this time. For this reason, the Environment and Wildlife Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

SENATOR LARSEN: Again, I rise to oppose the inexpedient to legislate motion with the same issue. The concern is that, while there is a new active employee in the Department, there still needs to continue...for input from the public. So the bill, as amended by the House, had a Senate member, sorry, two Senate members. The amendment, if you defeat the ITL, would remove the Senate members, but allow the Lakes Association, the Rivers Council, Fish and Game, members of conservation organizations and the Department of Resources and Economic Development, to sit down together to look at the...not only the need for motorized recreational opportunities, but non-motorized public use of water bodies. The issue, I think, the sponsors had is that oftentimes we attend to the interest of motorized boating and neglect the access that people who choose canoeing or kayaking also need access, and sometimes the two sites perhaps aren't compatible. So that is why, if you defeat the ITL on this, we will have a floor amendment to continue this commission, but to eliminate the Senate representatives so that we can have one less commission that we need to find a Senator to attend.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the motion pending of inexpedient to legislate and in favor of considering the floor amendment, which will come if we succeed in that. I simply want to report to my colleagues that I was approached by a group of Republicans and Democrats from the House who begged me to do something to stand up and ask for their right to make this study. They are very interested in this issue on the other side of the wall, and I know we don't have the ability to participate in that, but I think any time we can let them do work that they feel is important, we ought to do it. So I am going to vote no on the inexpedient to legislate, and I am going to support the effort to give the House a chance to do their work.

SENATOR JOHNSON: Thank you, Mr. President. You might note on the bill that I was a co-sponsor of this piece of legislation because of the remarks that I made on the floor today. I served on this board for two terms. They do...had been doing good work on water access. I got together with the New Hampshire Lakes Association and they assured me that they would be at these meetings, which will be public meetings, they are open to the public when they do meet. I also committed myself to be there to be sure that the issues addressed in this House Bill will be addressed. So I just wanted to let this body know that. Thank you.

The question is on the committee report of inexpedient to legislate. A division vote was requested.

Yeas: 14 - Nays: 6

Committee report of inexpedient to legislate is adopted.

Senator Foster rule #42 on HB 343.

HB 430-FN-A, establishing a one-day resident fishing license. Environment and Wildlife Committee. Ought to pass with amendment, Vote 5-0. Senator Gallus for the committee.

Environment and Wildlife

May 4, 2005

2005-1338s

10/04

Amendment to HB 430-FN-A

Amend RSA 214:9, II-b as inserted by section 1 of the bill by replacing it with the following:

II-b. If the applicant is a resident of this state and wishes to fish for one day, \$8, and the agent shall thereupon issue a one-day resident fishing license, which shall entitle the licensee to kill, take, and transport all species of freshwater fish, saltwater smelt, saltwater shad, and saltwater salmonoids, for said time only, under the restrictions of this title.

SENATOR GALLUS: Thank you, Mr. President. I move House Bill 430 ought to pass with amendment. House Bill 430 is a request of the Fish and Game Department. The Department felt more people will try the sport of fishing and at the same time, hopefully sell more season licenses in the future. The committee amendment merely corrects the fee to the amount originally requested by Fish and Game. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 477-FN, increasing registration fees for pesticides and commercial feeds. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House 477 ought to pass. House Bill 477 increases the registration fees for pesticides and commercial feeds. While reviewing the fee schedule, the commission discovered that the fees had not been increased in 13 years. The second part of the bill makes a housekeeping correction from "registered use pesticide" to "restricted use pesticide" in the bill. For this reason, the Environment and Wildlife Committee unanimously asks your support for the motion of ought to pass and I thank you.

SENATOR BOYCE: Senator Barnes, I am looking at the fiscal impact on this and, in your discussion of the bill, did you get into what it actually costs to provide this regulation? Are these fees in any way tied to what it costs to actually regulate this industry? I mean, isn't that what fees are supposed to be?

SENATOR BARNES: I don't believe Senator, that that was discussed at great length during the committee hearing. May I defer to Senator Gatsas who was on the committee?

SENATOR GATSAS: Thank you, Senator Barnes. It increases general fund revenues by \$345,000. So Senator, if you want to remove \$345,000 'cause you think we should regulate and it should be a 125, that certainly would be up to this body to make that decision. But it is \$345,000 additional to the general fund and I think right now, we need every nickel we can find in the general fund.

SENATOR BOYCE: Be that as it may, I am just curious if the only reason for increasing these is to raise revenue, or if the reason is because they haven't been raised in 13 years or because the cost of doing this part of business for the state has gone up?

SENATOR GATSAS: It hasn't gone up. It is a revenue generating situation on fees that haven't been increased in 13 years.

SENATOR BOYCE: Thank you.

SENATOR BARNES: Thank you, Mr. President. I would just like to say, Senator Boyce, that you raised some questions and concerns, and the good news is that this is going to come to your committee in Finance and you are going to be able to really delve into that when it comes to your Finance Committee.

SENATOR BOYCE: I rise in opposition to this. I hadn't noticed this bill before but, based on the discussion I just heard, this is simply a tax increase. The Constitution is very clear spelling out what are taxes and what are not taxes. A tax or a fee or impost or any duty or anything else that appears to be a tax is a tax, as far as the Constitution is concerned. I am opposed to increasing taxes. Now, if this was truly a user fee, and it was somehow related to the cost of what it actually costs to look at all of these pesticides and commercial feeds, and there was some tie between, you know, we had to put on three new inspectors because we have more people putting pesticides out, or we had to...or the cost of the laboratory fees for testing the commercial feed or something had gone up. If there was something that was tying it to tying these increase, to an increase in cost to the state government, then I would say yes, we should do this. But to simply raise this because it raises \$345,000 in general revenues, that is not a good enough reason for me. Therefore, I am opposed to this and I hope that my colleagues will vote no on the ought to pass.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 60-FN-A, relative to reimbursement of legal fees of the commissioner of the department of administrative services and making an appropriation therefor. Finance Committee. Ought to pass, Vote 4-1. Senator Clegg for the committee.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 60 ought to pass. The bill appropriates \$16,932 to cover the legal fees Commissioner Hill incurred during the legal case of Alpha Directions matter, as he was advised to obtain his own legal counsel. Please support the committee recommendation of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 206, relative to alcohol education and abuse prevention and treatment programs. Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 206 ought to pass. This bill clarifies that moneys deposited into the fund for alcohol education and abuse prevention programs are not to be used for any other purpose. The bill also provides the commission with the authority and flexibility to receive federal grants and clarifies the names and titles of the commission members. The committee recommends ought to pass on House Bill 206, and I thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 220, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood. Health and Human Services Committee. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

Health and Human Services

May 3, 2005

2005-1328s

05/10

Amendment to HB 220

Amend the bill by replacing section 6 with the following:

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2006. The report shall include, to the extent practicable, the estimated cost of both implementing and not implementing the committee's recommendations.

MOTION TO TABLE

Senator Martel moved to have HB 220 laid on the table.

Adopted.

LAID ON THE TABLE

HB 220, establishing a committee to study the ability of homeless youth in New Hampshire to make a successful transition to adulthood.

HB 259, relative to medical assistance for home care for children with severe disabilities. Health and Human Services Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 259 ought to pass. House Bill 259 puts into statute and thereby protects the Home Care for Children with Severe Disabilities Program, also known as Katie Beckett. The legislation takes the existing medical eligibility rules and places them in statute. Therefore, if the program is to be changed in

the future, those changes will have to be made legislatively. The bill provides an important level of security to those who receive Katie Beckett services and the committee recommends ought to pass on House Bill 259, and I thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 488, establishing a task force on mental health costs. Health and Human Services Committee. Inexpedient to legislate, Vote 3-2. Senator Kenney for the committee.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 488 inexpedient to legislate. While the goals of this legislation are important, the scope of the legislation is quite broad and existing studies and commissions could also address the issue. The committee recommends inexpedient to legislate on House Bill 488. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

HB 47, regulating the use of computer spyware. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Boyce for the committee.

Internal Affairs

May 5, 2005

2005-1355s

05/03

Amendment to HB 47

Amend RSA 359-G:1, IV(b)(2) as inserted by section 1 of the bill by replacing it with the following:

(2) Software or data that solely report to an Internet website information stored by the Internet website on the user's computer, including cookies, HTML code, or Java Scripts; or

Amend RSA 359-G:1, V(c) as inserted by section 1 of the bill by replacing it with the following:

(c) A user's personal information, including:

(1) A first and last name of a user, whether given at birth or adoption, assumed, or legally changed.

(2) Any of the following with respect to a user's home or other physical address: the street name, the name of the city or town, or the zip code.

(3) An electronic mail address.

(4) A telephone number.

(5) A Social Security number.

(6) Any personal identification number.

(7) A credit or debit card number.

(8) Any access code associated with a credit or debit card.

(9) A date of birth, birth certificate number, or place of birth.

(10) A password or access code.

(11) A bank account number.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 47 ought to pass with amendment. This bill provides that using spyware or similar computer programs to knowingly alter, control or damage a consumer's computer or Internet access will be a violation of the Consumer Protection Act if and when the federal government sees fit to pass similar legislation. Identity theft is an increasing problem in today's world. Having this legislation on the books and immediately ready to go into

effect when the federal government acts to help us, will be a plus. The Internal Affairs Committee asks for your help in passing this legislation. I am not going to go into a lot of detail about cookies and spyware and all the things that we heard in the committee, but suffice it to say that this bill will help New Hampshire citizens who are injured by this type of activity, to at least try and get their day in court. I believe it does preserve the right for our consumer to sue someone if they were damaged by somebody with this. The problem with most of this is, that it is hard to catch the person that actually writes the software. But I believe the intent of some of these things, especially the federal act, acts are to allow someone who is injured by this, their identity was stolen or their business was attacked by a spyware attack, there is usually some other party that profited. The case in point was brought up in a conference that I was at last...two weeks ago. A company called 1-800-contacts. They sell contact lenses over the Internet. On their website, you go through the whole process and you get to the shopping cart where you picked out the contact lenses with your prescription and the brand, you looked at the price, everything's all set. You click on the button that says I want to buy this, go to the purchase. You are going to go to the purchase page. Spyware that sits on your computer can see when you click on that thing to buy that contact lens. Instead of sending that information to 1-800-contacts for making the purchase, it instead cancels that transaction and sends an identical transaction to a competitor, 1-900-contacts or something. And that competitor then makes the profit by making the sale that 1-800-contacts had every right to make. The customer had said, I want to buy those contact lenses. So this is in effect like going to Hannaford Brothers and you're at the checkout, you've got your stuff in the shopping cart, you're putting it on the counter, and somebody from Joe's Grocery Shop across the street, is standing there and, as the checker scans them into the Hannaford Brothers bag, he's putting an identical thing in the Joe's Grocery bag, and instead of you getting the Hannaford's bag as you walk out the door, they substitute the bag from Joe's so you bought from Joe's but you thought you were buying from Hannaford's. This actually happened to 1-800-contacts. Their sales immediately dropped 20 percent the day this attack started. It took them a while to figure out what was going on, but their only recourse is to try and go and sue 1-900-contacts or whoever it was that the sale went to, because they can't find the guy who wrote the software. So the real intent of this type of legislation is to try and put a stop to it by allowing you to sue the guy that made the profit. You are never going to find the guy that wrote the software 'cause he is in, you know, Timbuktu or Kazakhstan or somewhere. We don't know where he is at, and we'll never find him. But if we can find the guy that makes the profit and sue him out of business, then he is not going to pay the guy that wrote the software to write the next one. So that is what this is about. This is a case where I do agree that lawyers are a good thing. Please join the committee in voting ought to pass.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 230-L, relative to default budgets. Internal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.

Internal Affairs
May 5, 2005
2005-1356s
08/01

Amendment to HB 230-LOCAL

Amend the introductory paragraph of RSA 40:13, IX(b) as inserted by section 1 of the bill by replacing it with the following:

(b) "Default budget" as used in this subdivision means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased by:

Amend RSA 40:13, IX(b)(2)-(3) as inserted by section 1 of the bill by replacing it with the following:

(2) Obligations required by contracts.

(3) Continuing obligations incurred by approved warrant articles.

2005-1356s

AMENDED ANALYSIS

This bill includes, in the calculation of a default budget amount, obligations incurred by approved warrant articles and contractual obligations.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 230 ought to pass with amendment. This bill clarifies items included in the default budgets which must be presented in the towns and school districts governed by SB 2. There has been much confusion in the construction of default budgets and what can or cannot be included. House Bill 230 specifically clarifies that only warrant articles that have a continuing obligation, such as the establishment of new positions, are included. The committee amendment adds clarifying language necessary to achieve the desired results. The Internal Affairs Committee requests that you would support the legislation as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 311-L, enabling towns to establish revolving funds for certain purposes. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move House Bill 311 ought to pass. This bill enables towns to establish revolving funds for recycling, ambulance or safety services. Monies adopted by the town meeting for one of these specific services can be used only for that purpose set forth in the warrant article. The Internal Affairs Committee requests your support of this legislation. Just very briefly. A given example would be the recycling. Money comes back into the town from selling items out of the recycling station. Instead of going into the general fund, if the town votes and it is enabling legislation, they could have a revolving fund that the money that they sell, comes back into that and it is much easier to keep track of the income and the recycling station. We urge your support and thank you.

Adopted.

Ordered to third reading.

HB 408, relative to the sale of town-owned land. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. This is a really interesting piece of legislation. It changes the existing statute from ten days to seven days. The reason being is that most select boards meet once a week. The House felt that it would be easier to have a public hearing and it would be able to see the property a week later, rather than waiting ten days. So all this does is change ten days to seven days after a hearing that the board can sell the town land. Thank you.

Adopted.

Ordered to third reading.

HB 255, establishing a committee to study the pricing of milk. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

Public and Municipal Affairs

May 4, 2005

2005-1347s

08/09

Amendment to HB 255

Amend paragraph I(b) as inserted by section 2 of the bill by replacing it with the following:

(b) One member of the senate, appointed by the president of the senate.

Amend the bill by replacing section 4 with the following:

4 Chairperson. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

SENATOR ROBERGE: Thank you, Mr. President. This bill establishes a study committee that will focus on the pricing of milk. The main goal of this study committee is to make sure that New Hampshire dairy farmers are being treated fairly with regard to milk pricing. The committee amendment reduces the number of Senate members to one. Please join me in voting for this bill. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 152-FN, establishing a commission to study the uses of biodiesel for home heating and vehicular transportation. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 3-2. Senator Flanders for the committee.

Transportation and Interstate Cooperation

May 4, 2005

2005-1342s

03/09

Amendment to HB 152-FN

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the uses of biodiesel for home heating and vehicular transportation.

Amend the bill by replacing all after the enacting clause with the following:

1 Committee Established. There is established a committee to study the uses of biodiesel for home heating and vehicular transportation.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Three members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study the uses of biodiesel as a renewable source of energy for home heating and vehicular transportation. The committee is authorized to request information and testimony from any person designated by the committee.

4 Chairperson; Quorum. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

6 Effective Date. This act shall take effect upon its passage.

2005-1342s

AMENDED ANALYSIS

This bill establishes a committee to study the uses of biodiesel for home heating and vehicular transportation.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. We changed this from a commission to a study. The reason being that there were discussions at the hearing who should be there and who shouldn't be there. Rather than naming them in the commission, we have enabled it that anybody who is interested can be asked to be there or can come to the hearing. Basically, bio-diesel is something that we have kicked around. I sponsored some other legislation. It is here. It is in New Hampshire. The main particular at this time, supplier of this fuel is in my district, has locations in Antrim, all the way up to the Colebrook area. We feel that this commission should study this before we consider any further legislation governing bio-diesel. It's there. We should find a way to use it. In time, it can reduce the amount of mercury into the air. It can clean our air as far as diesel smoke is concerned. It can help diesel engines and therefore, there are a lot of people who want to study this. The fuel dealers want to study it. We also included in this, heating oil **TAPE CHANGE** because of temperature. The study committee can look at these things and see what is viable as far as bio-diesel for heating. I ask your support that this study committee look at the situation of bio-diesel in the coming year. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 202, directing the commissioner of the department of environmental services to review options for reducing diesel engine exhaust emissions. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 202 inexpedient to legislate. The committee heard testimony that DES and the sponsors have all agreed that this bill is not necessary. There is already a mechanism in place to achieve what the bill wanted to do. Please support the committee recommendation of inexpedient to legislate and I thank you.

SENATOR LETOURNEAU: Just to add to that, Mr. President. I sat on a committee for two years doing this exact same thing which ended last year. The result was that the federal government has new regulations coming in regard to diesel emissions and diesel motors. There is new fuels coming on board in 2006 and 2007 and there are new motors coming in. So this commission was not needed. Thank you.

Committee report of inexpedient to legislate is adopted.

MOTION TO REMOVE FROM THE TABLE

Senator Larsen moved to take HB 313 off the table.

Adopted.

HB 313-FN, relative to registration of business entities. Executive Departments and Administration Committee. Ought to pass.

SENATOR LARSEN: Mr. President, I would move that we adopt the ought to pass motion. It will be followed by a floor amendment that in fact replaces the entire bill. While I personally have no issue with House Bill 313, at least I haven't heard any parts of it that I object to, I've been advised that House Bill 313 is not something which the majority want to see come back. However, there is the issue of what used to be Senate Bill 70, which the Senate passed. It's a very minor request from the Timothy and Abigail Walker Lecture Fund, which is solely in the city of Concord. They are asking for some changes to their legislative authorization. So this floor amendment, which will follow, which will replace everything that you are looking at right now. So you might as well not even look at it if you...unless you like it. The floor amendment will replace the entire thing and it will essentially say that the Timothy and Abigail Walker Lecture Fund is authorized to do something other than hold lectures. And in fact, they have already received probate court authorization to have free dramatic musical, literary, historical and other cultural events, but their statutory limitation just says they have to provide lectures. So this is what you will see if you vote ought to pass. We will replace it with the floor amendment.

SENATOR BARNES: Thank you Mr. President. Senator Larsen, didn't we take care of Abigail in Public Affairs about a month ago?

SENATOR LARSEN: We did. That was Senate Bill 70, and we sent it to the House. But, in the course of the discussions on the lecture fund, the office...the Attorney General's Office that oversees charitable trusts, advised us that we could fix this whole problem if we made Senate Bill 70, which had been a tiny little Walker Lecture Series bill, into a bigger bill which said that charitable non-profits that want to change their mission if they were created by statutory authority, if they want to change their mission in the future, they could file with the Secretary of State and the

Office of the Attorney General, and not have to come back for legislative authority to change their mission statement every time that they had something. So it would be by a vote of the board. That bill went to the House, and they retained it because, the more they looked at it, the more they saw problems with it. My main objective in this motion is to help this Lecture Series in Concord at this point, and we will deal with the bigger issue that's over in the House in the retained bill.

SENATOR BARNES: Thank you, Senator.

SENATOR EATON (In the Chair): Senator Larsen, just for general information. House Bill 313 was just passed out and the floor amendment 1416 is being passed out now.

Senator Larsen offered a floor amendment.

Sen. Larsen, Dist. 15

May 12, 2005

2005-1416s

01/09

Floor Amendment to HB 313-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to the Timothy and Abigail B. Walker Lecture Fund.

Amend the bill by replacing all after the enacting clause with the following:

1 The Timothy and Abigail B. Walker Lecture Fund; Purposes. Amend 1893, 242:2 to read as follows:

Sect 2. Said corporation is hereby empowered to receive from the administrator with the will annexed of Abigail B. Walker, late of Concord, the legacy given to the grantees of this corporation as trustees to constitute a fund to be called The Timothy and Abigail B. Walker Lecture Fund, and to hold the same and apply the income thereof to the charitable purposes declared in the said will,—that is to say, to the procurement of free courses of lectures upon subjects of history, literature, art, or science, *and free dramatic, musical, literary, historical, and other cultural events*, to be given in Concord, the native city of Timothy Walker and the lifelong residence of Abigail B. Walker; and no bond shall be required of said corporation.

2 Effective Date. This act shall take effect upon its passage.

2005-1416s

AMENDED ANALYSIS

This bill adds to the charitable purposes for which the Timothy and Abigail B. Walker Fund may be used to include free dramatic, musical, literary, historical, and other cultural events.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry?

SENATOR EATON (In the Chair): Yes sir.

SENATOR BURLING: If I truly want to vote for changing the Lecture Series, the small part, what votes would I take at this point?

SENATOR EATON (In the Chair): The amendment will be coming up for a vote right now. If that amendment passes, then you will be voting on the bill as amended.

SENATOR BURLING: So the amendment is this in fact TAPE INAUDIBLE?

SENATOR EATON (In the Chair): That is correct.

SENATOR BURLING: Thank you, Mr. President.

SENATOR KENNEY: Mr. President, I appreciate the sponsor of the floor amendment bringing this forward, but I would ask that we defeat the tabling motion or take it off the table motion because...we've done that, excuse me. We've done that. I will add that the Secretary of State has asked that the bill in the House get somehow resolved, and then to re-address this at the appropriate time.

SENATOR BARNES: Thank you, Mr. President. Senator Larsen, have you heard from the Secretary of State?

SENATOR LARSEN: I had heard from the Secretary of State that House Bill 313 was one which they wanted to pass. When I was preparing this amendment, I was advised that there was no interest in passing House Bill 313 and that, if I wanted to correct the Walker Lecture Series problem, I should just bring in a bill to replace all of the above.

SENATOR BARNES: To clear up the answer to that, the Secretary of State didn't come to you and say that he didn't want this to happen right away?

SENATOR LARSEN: The Secretary of State has no problem with the amendment relating to the Walker Lecture Series.

SENATOR BARNES: Thank you very much.

SENATOR LARSEN: But they did indicate that they would like to see House Bill 313 pass. I, as I say, have no problem with House Bill 313 passing.

Recess.

Out of recess.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 57, establishing a commission to study ways to alleviate medical malpractice premiums for high risk specialties.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 57, establishing a commission to study ways to alleviate medical malpractice premiums for high risk specialties.

SENATOR KENNEY: Mr. President, I would ask the body to concur with the House's amendment, which is a representative of the New Hampshire Chapter of American Colleges Obstetricians and Gynecologists, ACOG appointed by such association. Thank you, Mr. President.

SENATOR GATSAS: Question of you, Mr. President. Are we going to get receipt of these bills before we take these votes, so we know what they say and what the amendments are?

SENATOR EATON (In the Chair): I think we went over that in caucus, but we will talk about this later.

Senator Kenney moved to concur.

Adopted.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry? As a member of the minority and not ordinarily allowed to join your caucus, when would we get a chance to discuss this issue?

SENATOR EATON (In the Chair): I thought that was disclosed to you this morning. If not, my apologies.

SENATOR BURLING: A series of questions, am I right Madam leader? Weren't there some questions left to us?

SENATOR LARSEN: Mr. President, if I can speak? I think, on behalf of the Democratic caucus, we have asked for some future discussions as how concurrence occurs. And we did get notice of the two we are doing today. Because they are so minor, but it would make sense. We ask for example, that committees...when a committee chair receives a bill for concurrence, that he check in with his entire...he or she check in with the entire committee, and that we get perhaps a little head time notice because finding out about it at 9:30 when we are going in at 10:00, it would be preferable to have more time for that. So we were going to talk about that process following, at some point, following this session.

SENATOR EATON (In the Chair): **TAPE INAUDIBLE**

SENATOR LARSEN: Right. Correct.

SENATOR BURLING: I was in the room, but I guess I didn't hear the representation that we would have further discussion later. My apologies to the body.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge, renaming the White Mountain Attraction Building as the Dick Hamilton Building, and renaming the Twin Mountain Bridge as the Kenneth B. Jordan Memorial Bridge.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge, renaming the White Mountain Attraction Building as the Dick Hamilton Building, and renaming the Twin Mountain Bridge as the Kenneth B. Jordan Memorial Bridge.

SENATOR LETOURNEAU: Thank you, Mr. President. I hope this one is not as complicated. The House didn't like our using the word "renaming" and they changed it to "naming". And the second amendment they put on there was to add the language "that the design, construction,

and installation of any signage or other markers required under this act, shall be approved by the Department of Transportation." I urge the body to concur.

SENATOR ESTABROOK: Can you repeat the last part?

SENATOR LETOURNEAU: Sure. The additional language is, and added to the section four of the bill after it says it "cost of design, construction and maintenance and installation of any signage or other markers should not be a charge to the state." That is the original language. Added to that language is "the design, construction, and installation of any signage or other markers required under this act shall be approved by the Department of Transportation." So basically what it is saying is the DOT gets veto power over any signs that go up which, to me, makes sense. I urge the body to concur.

SENATOR GALLUS: Excuse me, Mr. President. I think, Mr. Chairman, the building, the White Mountain Attraction Building, I think the name was changed in the House to the William B. Fadden Building. Is that correct?

SENATOR LETOURNEAU: Say that again?

SENATOR GALLUS: The change of the name the "White Mountain Attractions" name building.

SENATOR LETOURNEAU: All they changed was...the language was changed from "renaming" to "naming".

SENATOR GALLUS: But naming...I think there is a change in the name also from the House.

SENATOR LETOURNEAU: Okay. They're naming it the Norman B. Fadden Attraction Building.

SENATOR GALLUS: Okay. Thank you.

SENATOR LETOURNEAU: And I am sure that is what you wanted.

SENATOR GALLUS: Yes.

SENATOR BURLING: I believe this is what I jokingly referred to a couple of weeks ago, because I think the name is already on the building. Is it not?

SENATOR GALLUS: Yes.

Senator Letourneau moved to concur.

Adopted.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 60-FN-A, relative to reimbursement of legal fees of the commissioner of the department of administrative services and making an appropriation therefor.

HB 152-FN, establishing a commission to study the uses of biodiesel for home heating and vehicular transportation.

HB 206, relative to alcohol education and abuse prevention and treatment programs.

HB 230-L, relative to default budgets.

HB 255, establishing a committee to study the pricing of milk.

HB 259, relative to medical assistance for home care for children with severe disabilities.

HB 311-L, enabling towns to establish revolving funds for certain purposes.

HB 313-FN, relative to registration of business entities.

HB 408, relative to the sale of town-owned land.

HB 430-FN-A, establishing a one-day resident fishing license.

ANNOUNCEMENTS

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 12, relative to contracts with non-profit public academies.

SB 18, relative to sales of tickets for pure lotteries by those not employed by the lottery commission.

SB 68, relative to certain costs for the development of a high school in the town of Bedford.

SB 169, relative to access to confidential court records.

SB 210-FN, relative to a declaratory judgment to adjudicate constitutional nexus.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 229, establishing a committee to study the establishment of a farm viability program.

HB 447-FN, relative to black bear license and tag fees.

HB 697-FN, establishing a committee to study medicaid reimbursement rates for pharmacy providers.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 86, relative to property held in police department property rooms.

HB 97, relative to replacing school budget committee members.

HB 138-FN, requiring medical examiners to inventory and account for property taken from decedents.

HB 141-L, relative to the planning board's authority to limit building permits.

HB 210-FN, relative to the determination of absence and return of contributions of members of the retirement system.

HB 216-FN, relative to the authority of the New Hampshire retirement system to purchase supplies and services.

HB 247, extending the law regarding receivership of care facilities for a certain length of time.

HB 263, relative to the use of design build and construction management methods for state capital projects.

HB 267, relative to requests for services other than counsel for indigent defendants.

HB 268-FN, increasing certain motor vehicle fees.

HB 280, relative to the manner of service in divorce and child custody proceedings.

HB 304-FN-A, relative to federal highway grant anticipation bonds.

HB 386, relative to agricultural best management practices.

HB 389, relative to the duties of the postsecondary education commission.

HB 480, relative to innovative land use controls.

HB 483, relative to instructions to be placed on the general election ballot.

HB 512, expanding the study committee on property tax relief to include reverse mortgages.

SB 41, relative to penalties for certain OHRV violations.

SB 49-FN, including multiple sclerosis in the catastrophic illness program.

SB 55, relative to the New Hampshire film and television commission and state promotional initiatives.

SB 59, relative to the general powers and duties of guardianship.

SB 60, clarifying probate court procedures in cases involving the Uniform Transfers to Minors Act.

SB 98-FN, relative to issuing duplicate registrations for off highway recreational vehicles.

SB 106-FN, making unauthorized recording in a motion picture theater a crime.

SB 182-FN, relative to electronic issuance of warrants.

Senator D'Allesandro moved adoption.

Adopted.

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

May 19, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! I missed you. It sounds like things these days are pretty hot in the other Senate chamber, the one in Washington, as they argue over judicial nominations and filibusters. Is it principle or is it priority? Is it constitution or parliamentary customs that could be changed? Is it activist judges or partisan political appointees? Is it advice and consent or is it minority rule? Those are all fair questions. What is not fair is the apparent absence of personal, mutual respect that pollutes and dishonors this debate going on in Washington. And is it not true that this toxic tendency we see on display in Congress, is merely a reflection of how all of us act some of the time, even over there in the church, even down the hallway in this building, and God forbid, even in this historic, beautiful room? I know that you have some very hard work to do, especially at this time of year. I know that you have very big choices to make for us and I bet it is tempting sometimes to view and to treat your legislative adversaries, dismissively or scornfully or with contempt. Please don't do that, because we, who place you here, need to learn how to get along ourselves, and you can show us the way. Let us pray:

Bless, O Lord, this group of saints – and remind each one, in carrying out the vital work they do, that that is what they are. And please help them to enjoy one another accordingly.

Amen

Senator Letourneau led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR EATON: I would like to now say just a few words about the disturbing news we all heard last Friday that the Portsmouth Naval Shipyard was listed by the Pentagon for closure. It seemed almost a cruel joke that the shipyard was given a meritorious award by the Navy on Thursday and then slated for closure on Friday. The ironies continue as we now celebrate Armed Forces Week. The Portsmouth Naval Shipyard is a critical national security asset and our regional leaders will stand united in presenting the strongest possible case to the BRAC Commission. The state of New Hampshire has already committed \$100,000 towards this effort. Today the full Senate reaffirms its unified position that the shipyard must remain open and I am pleased, on behalf of the New Hampshire Senate, to read the following Senate Resolution in support of the Portsmouth Naval Shipyard and its workers, and for whom our hearts go out to at this uncertain time:

A Resolution honoring the Portsmouth Naval Shipyard:

Whereas, the Portsmouth Naval Shipyard, in 1690, built the first naval war ship in North America.

And Whereas, the Portsmouth Naval Shipyard is a vital national security asset.

And Whereas, the Portsmouth Naval Shipyard, one of only four publicly owned shipyards remaining in the country, is the most experienced shipyard in the submarine design, construction, modernization, and maintenance.

And Whereas, there are more than 2,000 New Hampshire residents who work at the Portsmouth Naval Shipyard representing a combined payroll of \$122 million.

And Whereas, the Portsmouth Naval Shipyard has a significant impact on the regional economy, including \$50 million in purchased goods and services and \$46 million in contracted facility services.

And Whereas, the Portsmouth Naval Shipyard based on its value to our country's defense has survived two previous rounds of base closures.

And Whereas, the Portsmouth Naval Shipyard was listed by the Pentagon this past Friday for closure.

And Whereas, the New Hampshire Senate stands united in its support for keeping the Portsmouth Naval Shipyard open for the good of our national security, for the workers and their families, many of whom have dedicated their lives to the shipyard, and for the good of our regional economy.

Now therefore pursuant to a motion of Senator Thomas R. Eaton, be it resolved by the New Hampshire Senate that this legislative body expresses in the strongest possible terms, that the Portsmouth Naval Shipyard be removed from the base closure list, and as a body, we urge our New Hampshire congressional delegation, in partnership with other regional leaders, to work tirelessly toward that end.

That will be presented to our congressional delegation and also sent to Washington.

SENATOR FULLER CLARK: On behalf of my constituents and the seacoast, I would like to thank the entire Senate for this resolution and to ask for your continued support, involvement and engagement as we move forward between now and September to take the best shipyard in the country...public shipyard in the county, off the base closure list. Thank you.

MOTION OF RECONSIDERATION

Senator Johnson, having voted with the prevailing side, moved reconsideration of **HB 472**, relative to the definition of recreational program, whereby we ordered it to third reading.

SENATOR JOHNSON: Thank you, Mr. President. I move reconsideration on House Bill 472 and ask you to please vote in support so that I can offer a floor amendment to correct an unfortunate oversight. Thank you.

Adopted.

HB 472, relative to the definition of recreational program.

Senator Johnson offered a floor amendment.

Sen. Johnson, Dist. 2

Sen. Clegg, Dist. 14

Sen. Larsen, Dist. 15

May 16, 2005

2005-1426s

05/01

Floor Amendment to HB 472

Amend the bill by replacing sections 1 and 2 with the following:

1 New Paragraph; Child Day Care Licensing; Definition of Recreational Program Added. Amend RSA 170-E:2 by inserting after paragraph XI the following new paragraph:

XI-a. "Recreational program" means any before and/or after school, vacation, or summer youth program for children 6 years of age or older offered by a school or religious group, the Boys and Girls Clubs of America, Girls, Incorporated, the YMCA, or the YWCA, provided that the program:

(a) Does not operate in a private home;

(b) Notifies parents or guardians that the program is not subject to licensure under RSA 170-E:4;

(c) Has policies and procedures to address the filing of grievances by parents and guardians; and

(d) Is a member in good standing and in compliance with the national organization's minimum standards and procedures.

2 Recreational Programs Exempt from Definition of Child Day Care Agency. Amend RSA 170-E:3, I(g) to read as follows:

(g) ~~[Any recreation program offered by the Boys and Girls Club, Girls, Inc., YMCA, YWCA, and any school or church group]~~ ***Any recreational program as defined in RSA 170-E:2, XI-a.***

SENATOR JOHNSON: Thank you, Mr. President. What this floor amendment does is correct a situation which was not legislative intent. Legislative intent was to have the municipalities participate in the programs for children who are under the age of six, preschool children. In the House, that was a mistake that was made over there, so that is what we are trying to correct with floor amendment #1426s. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. Senator Johnson, as I read the amendment that you passed out, it seems to me that what we are doing is in section XIa. We are still dealing with programs that service children six years of age or older.

SENATOR JOHNSON: I think, Senator, that if you look at line 18, which adds "any recreational program as defined in RSA 170:E, II, XI a", I think that takes care of the problem as I understand it.

SENATOR ESTABROOK: Isn't that a reference back up to line five? I would just like to be clear because...well, I'll wait. After you answer the question I'll speak.

SENATOR JOHNSON: I'm sorry?

SENATOR ESTABROOK: I'd just like to clarify where the reference is and which group of children we are dealing with here.

SENATOR JOHNSON: Well, I think on line five it spells out "recreational program" means "any, before and/or after school, vacation or summer youth program for children six years of age or older offered by a school or religious group, and the Boys and Girls Club of America, Inc. YMCA, YWCA, provided that the program...", and then it goes on to list the programs.

SENATOR ESTABROOK: I'm just asking because, in your comments, you said that we were by this amendment, expanding this to children under six, and first of all, I don't see in the amendment where it does that, and second of all, that is a real departure from the intent of the bill, and the years of discussion that went into the careful wording of this bill.

SENATOR JOHNSON: If I may, Mr. President, I will read the short comments that were made on House Bill 472. I would like to offer the floor amendment 1426s. This floor amendment contains the definition that the House wants regarding programs offered by Boys and Girls Clubs and YMCAs and YWCAs. The only thing this amendment does is to remove municipal recreation programs from this bill. The current exemption in statute would remain in statute. If municipalities were to lose their current exemption, they would have to obtain a license from Health and Human Services to operate any program for children under the age of six. There is not an issue with the excellent programs offered by our municipal recreation departments throughout the state. The legislative policy has clearly been, and should continue to be, that these programs are exempt from the requirement of child daycare licensing. That was the testimony that was made on the floor.

SENATOR ESTABROOK: Do you know whether your amendment has the support of both the bill sponsors or have you spoken with them?

SENATOR JOHNSON: Yes, I have spoken to Representative Patten and I am not sure about Representative Gile. I did not have an opportunity to talk with her.

SENATOR ESTABROOK: Thank you very much.

SENATOR ESTABROOK: Thank you, Mr. President. Having only had the opportunity to look at the amendment this morning, as I am reading it, I don't see any change to expanding to children under six. I want the record to reflect that. If indeed the intent here is to change the applicable group to those under six, I would strongly object to that. I have worked for many years in the early childhood field, and any program serving children under six should meet state licensing requirements. And we have gone round and round on this in the early childhood community, for many years as I said. The language in the House bill was intended to be applicable to those over six. So, I just want the record to reflect that if the intent now is otherwise, we'll be having a serious discussion in the Committee of Conference. Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator Johnson, the original bill as amended by the Senate, on line five has a municipality. It seems as though the municipality doesn't have the exemption in the amendment. I can tell you that Manchester has a program called "Fun in the Sun" and it is a city run program. I don't know if that is an exemption that has been eliminated or not. Line five says...

SENATOR JOHNSON: A municipality. As it is amended by the Senate on line five, in the "A" designation?

SENATOR GATSAS: Yes, but your amendment, Senator, rewrites sections one and two.

SENATOR JOHNSON: This 1425, I believe that is correct. I believe that is correct.

SENATOR GATSAS: So, just for the record then, the municipalities are not...they are exempt? That they are exempt?

SENATOR JOHNSON: I think that if we take a look at RSA 170-E, 11(a), I think that adding that in where it says "any recreational program", I think that defines it, I think. May I refer that question to Senator Boyce?

SENATOR BOYCE: I think I can answer this quickly. The problem seems to be that the original bill, as amended by the Senate, on line 13, struck the language in "F" of the statute, "municipal recreation programs including after school and summer recreational programs", which is what Senator Gatsas was concerned about. In the amendment, the amendment does not strike that language in "F". It leaves it in the statute. It strikes the language in "G" only. So it leaves that language that is on line 13 and 14 as struck out. It does not strike that. So it does cover municipalities, that is why it is not listed up in "A", "B" and "C" of the upper part of the amendment. So the amendment, as I read it, does clearly leave the municipal programs in tact.

SENATOR GATSAS: Senator Boyce, on line two...line four says "amend RSA 720-E, II by inserting after paragraph XI the following new paragraph."

SENATOR BOYCE: Correct.

SENATOR GATSAS: So that means that the paragraph that you are referring to is gone and I don't see the exemption for municipality in there.

SENATOR BOYCE: Okay. The exemption is in current statute. And in the original amendment. The original amended bill on line 13.

SENATOR GATSAS: I see it. I have it here.

SENATOR BOYCE: "F" would have been struck by that language. It leaves...the new amendment leaves "F" intact without changing it. The amendment only changes "G", it doesn't change "F". "F" continues. The statute will read that municipal programs are exempt.

SENATOR GATSAS: I guess, if I want to make a motion for reconsideration if I don't agree, we can do that, I assume. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

COMMITTEE REPORTS

HB 153-FN, relative to the collection of debts owed to the state. Banks and Insurance Committee. Re-refer to committee, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. We had several hours of discussion on this bill. We think it is a good bill. We think it has some great ideas. My notes say "ITL. So, based upon that, we felt that we should re-refer it and maybe look at this for a while. We ask you to please re-refer. Thank you.

Adopted.

HB 153-FN is re-referred to the Committee on Banks and Insurance.

HB 329, establishing the crime victim employment leave act. Banks and Insurance Committee. Ought to pass, Vote 5-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 329 ought to pass. This bill would encourage employers to allow victims

of a crime to take time off from work without fear of repercussion in their job situation. Employers cannot threaten employees with job loss. The employer is not required to compensate for missed time. This bill will also help the state of New Hampshire prosecute cases and will give victims some comfort of participating in the court process, knowing that they will not be victimized again by losing their job. The Banks and Insurance Committee asks your support on the motion of ought to pass. Thank you.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

May 16, 2005

2005-1429s

06/09

Floor Amendment to HB 329

Amend RSA 275:65 as inserted by section 1 of the bill by replacing it with the following:

275:65 Penalty. Any employer violating any provision of this subdivision shall be subject to a civil penalty, to be imposed by the labor commissioner in accordance with the procedures established in RSA 273:11-a. An employer aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11-c.

SENATOR FLANDERS: I have 1429. Will you please look on the original bill on line 17, page two, 273:11-b. My amendment changes 273:11-c. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 561, relative to reasonable accommodation by employers under the state law against discrimination. Banks and Insurance Committee. Ought to pass, Vote 4-1. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move House Bill 561 ought to pass. This bill is straightforward and brings New Hampshire's law on disability discrimination in line with the Americans with Disabilities Act, an act that was championed by Senator Robert Dole and signed into law by President Bush. Currently, New Hampshire employers are not required to provide reasonable accommodation for applicants or employees with physical and mental disabilities. The committee heard overwhelming testimony of the need to add reasonable accommodation and, in many instances, it would cost employers little or nothing. For example, if somebody needs a wheelchair to get to work, it might mean adding a ramp, which would cost very little. If things cost too much and it is an unfair burden on the employer, the discrimination claim would fail. I think some of you have heard perhaps misinformation about this piece of legislation. When we had the hearing, frankly, very...I don't recall any adverse testimony. I frankly might have expected some of the chambers of commerce to raise at least concerns; I heard none. They are the ones who represent small business, and I didn't hear any. Now I think, at the eleventh hour, perhaps some misinformation is being passed about the legislation. This bill will treat disability discrimina-

tion the same way we in New Hampshire treat race, age, and religious discrimination - no differently. It allows us to decide what a reasonable accommodation is here in New Hampshire, not go down to Boston to find out what they might think is reasonable. And, if you think what might be reasonable to a landlord in the city of Boston, where the fifty-story skyscraper might be a lot different than a guy who has a very small building here in New Hampshire. Under existing law, those who are covered by the statute have to go down to Boston to litigate their issues. Here, we will have local people, the Human Rights Commission investigating these cases and deciding whether or not discrimination exists. So if there is misinformation or concerns, I urge people to ask questions. I know there are others in this body who have worked with the statute. With that, I will say the Banks and Insurance Committee asks for your support of ought to pass. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I thank my colleague Senator Foster for an excellent explanation of this bill. I just want to add my support for ought to pass as a sponsor of the bill and also as a practicing attorney who defends employers in discrimination claims, and the mother of a child who uses a wheelchair. It is important to understand that, without this legislation, New Hampshire will be treating those people with disabilities who need the protection of anti-discrimination law differently than other people in the state who need protection of anti-discrimination laws. So we would be treating differently, those with disabilities than those who might have a race claim or a gender claim or an age claim. Right now, the anti-discrimination laws that New Hampshire has, apply to employers who have six employees or more, and the only anti-discrimination law that does not apply to those employers is a reasonable accommodation provision in disability discrimination law. The reason that provision is so important is that the heart of discrimination, anti-discrimination laws, is to prevent people from prejudging applicants or employees because they have stereotypes about the person's race, their gender, their age, or their disability. In many cases, employers mistakenly believe that they cannot reasonably accommodate somebody with a disability. So they simply make the decision not to hire them or not to accommodate them without investigating with a give and take with the employee, what the reasonable accommodation would entail. For instance, a very minimal purchase of computer software so somebody who might be losing their vision could actually use a computer. So those are the kinds of reasonable accommodations that this law requires employers to make. This law would simply bring New Hampshire's disability discrimination statute in harmony with federal law, just the way all of our other discrimination statutes are currently in harmony with federal law. And some businesses recently, larger business organizations have approached me and said they thought this would be a new and imposed burden. As Senator Foster has said, there is in the law, a requirement that undue burdens not be required. This is a law that most employers in the country and in other states, and our surrounding neighbors, and here in New Hampshire, for employers 15 or larger, already work with and understand. While there may be some fear and some need for people to get used to this law, I want folks to think about two things. One is, every person in this state counts. We believe in family values. We believe and know how important it is for any parent, any head of household, to be able to support his or her family. This law provides the ca-

capacity for a person with a disability to have an exchange with his employer, to prove that he or she can do the job, can support their families. I would also suggest to you that, without this law, if we don't encourage our employers to understand that they are stereotyping people unnecessarily, we will continue to have more people than we should getting disability benefits because they cannot work. This is a full employment provision or a better employment provision for people who are ready and able and so wanting to work, and can do so if we all come together and understand the importance of reasonable accommodation. So I would ask for your support for this bill. This is a bill that promotes dignity. It promotes family values. It promotes work, and it promotes New Hampshire values. Thank you.

SENATOR FLANDERS: Thank you, Mr. President. As chairman of the Banks and Insurance, we held this hearing and we had a very interesting hearing. No one signed up in opposition to this bill. Everybody that came and spoke made, in my opinion, very good sense. What got stuck in my mind as much as anything is that these people now, if they have a claim, they have to go to Boston. We heard testimony from people in wheelchairs, people on crutches, people with braces, saying how difficult it is to get from New Hampshire into Boston. After the hearing, I contacted some attorneys who represent these people and what basically happens in Boston is, they go down there and in a year or year and a half later, they get a slip of paper from the Boston Hearings Officer saying "now you can go to court". So we have wasted a year and a half going to Boston to people who really don't understand our situation here in New Hampshire. This situation that we have asked you do is to let the Commission of Human Rights work with these people. Which what we heard for evidence was that they will go and they will work for the people, they will work out the problems and most of the time, there will be little or no time lost because they will fix the problem. Because most of these problems are very, very light. Let me say, having been an adjuster for years, when we had someone injured, we went into the factory, we went into the home or we went and we made arrangements for this person to be able to work. That is all that needs to be done. Also, if they are not happy with the result of the Human Rights Commission, they have a right to go to Superior Court. So let's keep it here in New Hampshire. Let's not turn this around. Let's keep it here. Let's keep it here with people that know our problems. Know our small businesses and can go in and talk to the owners, and talk to the bosses, and fix the problem here. Let's not let them have to go to Boston. Now if they want to go under the federal law they can. I called up and I have checked this. If they feel it is more advantageous for them to go to Boston, they can. They don't have to go this route. They have a choice. So in other words, if some federal court in some other state makes a decision that is really great, then they can start going to Boston. So it doesn't force them to stay here. But I really think that if you'll just take a minute and think of somebody in a wheelchair, that is going to go into Boston, go into the center of Boston by bus, think about it, to go down there to have a hearing, to get a slip of paper in a year or year and a half, saying you can go to court. I think that if we can stop that, we should, and I ask you to support the committee. Thank you.

Recess.

Out of recess.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I will be very brief, as others have spoken on the bill. But it seems to me it is a very reasonable piece of legislation. It puts us in line with a method of thinking that we have had and we have progressed with over the years. We made it possible for our handicapped to get Medicaid, Medicare insurance so that they could continue to work without losing their job. We know that there is a high unemployment rate. Almost 70 percent. This is a reasonable situation. A very reasonable situation that carries us a little further along that path, which I think makes a great deal of sense. Let me use the great example. The great example is Carol Nadeau, who was barred from going to school because they couldn't accommodate her. She was barred from attending public school. She was finally admitted to Concord High School. Went on and went to Concord High School; went to Notre Dame College, got a Bachelor's Degree; went to New England College and got a Master's Degree, and is now the Executive Director of the Governor's Commission on Disability. Why? Because people made access available to this young woman; gave her an opportunity to be an active member of this society. A tax-paying member of this society. That's the example that we should stand on. We give people an opportunity, regardless of any handicap that these people have. It is good public policy. This is something we should do, we should have done a long time ago. I urge you to support this piece of legislation.

SENATOR MARTEL: Mr. President, basically all the things that I wanted to say have already been said. This bill concerns me only in one way. I have been a champion for civil rights among the disabled since I came in 1987. I have tirelessly worked for people with massive head injuries, other deformities and infirmities in order to protect them and to help them along. What I fear about House Bill 561 is, if there is no help for the little man, the little business, this situation could be extremely harmful to them, because they cannot afford or cannot make the accommodations that the federal law and the ADA ask them to make. When I worked for Grand Union, I was on the Disabilities Commission, and I worked for the company, representing them...representing the company with these disabilities claims, and with employees who were disabled. I was very fortunate back then to learn an awful lot about these particular regulations, rules and laws. One thing that is for sure, that you don't want, Civil Liberties to come down. They really come down hard on a business, even though that business is working extremely hard to meet the needs, all the needs, I should say, of these employees or an employee. Circumstances sometimes, where a company just cannot make the moves and, for the most part, that's understanding for the employee who may be disabled, unless they are being grossly neglected. I find it difficult to believe that very many companies in this state, especially small employers, are neglecting these people. This here will hurt, in my mind, the small businesses. The threshold will go from fifteen to six. I fear that it will go from six to one as time goes by. Now, the essence of the bill is excellent. There is no doubt about that. The meaning is excellent. I think that we have to look at the unknown consequences about what could happen if we move to eliminate the small businessman from the marketplace because he just cannot or she cannot accept or work or deal with these situations that they are mandated to do. So I urge my fellow Senators to think this out and really vote your conscience on this, of course, but I know that I cannot do it. Thank you very much, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I attended this hearing and I was fairly impressed, as Senator D'Allesandro said, by Carol Nadeau who reminded us that sometimes it is not a major accommodation that has to be made. In her situation, when she came to work for the state, they needed to give her a lazy susan type turntable so that she could reach things as she sat in her wheelchair. Not everything is major. Let's not forget that when a person has to build a building, they have to comply with the building codes in effect at the time anyway. There have to be ramps, there have to be access to these buildings. People are thinking, I think, in too large a scale under these circumstances. We have to recognize that people who come to work every day are a benefit to our community and to our state, and we have to try to get them there and to reasonably, emphasis on "reasonably", accommodate them. Thank you.

SENATOR HASSAN: Thank you, Mr. President. Just to respond a little bit to some of Senator Martel's concerns. The whole point of the reasonable accommodation is that it doesn't put an undue burden on businesses of any size. The evaluation is made by the employer in concert with the employee about whether the accommodation being requested, compared to the size of the business, the overall income of the business, those kinds of things, is in fact an undue burden or not. What this requires is that the conversation take place. Right now, under New Hampshire law, unlike all of the laws in our neighboring states and most of the country, and federal law, be aware that other states require reasonable accommodation starting with small businesses at about six employees. We are the lone star in New England of not requiring reasonable accommodation. All this law does is require a conversation to take place so that the employer must learn enough from the employee to determine whether it's an undue burden or not, whatever reasonable accommodation is being requested. I know I have been in New Hampshire for 16 years with a son who uses a wheelchair, and is otherwise severally disabled. There is not a kinder place in the country. There is not a better place in the world to raise a child with a disability than Exeter, New Hampshire, where my child's wheelchair is lifted in and out of stores and old buildings, where storekeepers come out and watch him if I need to go in and can't get the wheelchair in. This is a remarkable place. New Hampshire is a remarkable place. But freedom does not mean that you must go through life relying on the kindness of strangers. Freedom requires that people acknowledge that you are an individual with dignity on your own. That you're capable of earning your own way, and it does not allow stereotypes to keep you from being a full participant in society. This is a bill about freedom. If we do not pass this bill, New Hampshire will be treating people with disabilities who have possible discrimination claims differently than those who might have race claims or gender claims or age claims. We are singling out people with disabilities and saying that they are less worthy. I know many people in this room have small businesses and accommodate disabled people already. I thank you for that. But human rights and human dignity require equality not just kindness and charity. And for that reason, I urge you to vote for this bill, and I respectfully request a roll call. Thank you.

The question is on the motion of ought to pass.

A roll call was requested by Senator Hassan.

Seconded by Senator Foster.

The following Senators voted Yes: Burling, Green, Flanders, Odell, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Roberge, Eaton, Bragdon, Clegg, Barnes, Martel, Letourneau, Morse.

Yeas: 12 - Nays: 12

Motion failed.

SENATOR GREEN: My understanding is that that bill just died, inexpedient to legislate. Can you table a failed motion? It was ought to pass. But, it failed.

SEANTOR EATON (In the Chair): Yes, so we do need another motion on the floor. My apologies.

SENATOR GREEN: Thank you.

Senator Clegg moved inexpedient to legislate.

MOTION TO TABLE

Senator Larsen moved to have HB 561 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 561, relative to reasonable accommodation by employers under the state law against discrimination.

HB 594-FN, relative to retirement system classification for department of corrections correctional line personnel. Banks and Insurance Committee. Inexpedient to legislate, Vote 5-1. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 594 inexpedient to legislate. The committee heard testimony on how Department of Corrections line personnel, who work in a hazardous environment every day, are threatened with losing some of their retirement benefits. All of these employees work amongst the population that requires them to pass an eight-week police course to work closely with inmates. The Commissioner of Corrections is opposed to this bill and explained that this bill would have an adverse affect on retention and recruiting. Many of the correctional employees in this group appeared at the hearing and explained how they have to be very aware of the dangers of their environment, and that they are at risk every day that they work. The Banks and Insurance Committee asks for your support on the motion of inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

Senator Martel is in opposition to the motion of inexpedient to legislate on HB 594.

HB 623-FN, relative to licensing requirements in the insurance and financial services industries. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move House Bill 623 ought to pass. This legislation would make practicing insurance and financial services without a license a Class A

misdeemeanor, which is the standard penalty for practicing without a license under the New Hampshire statutes. The Banks and Insurance Committee unanimously asks you to support the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 651-FN-L, relative to federal lien registration. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 651 ought to pass. This legislation would change the federal lien process to the Secretary of State's Office from the city or town. This is a cost effective measure of filing liens. The Banks and Insurance Committee unanimously would like you folks to go along with it and vote ought to pass.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 132, relative to grounds for dismissal of a teacher. Education Committee. Ought to pass with amendment, Vote 4-2. Senator Bragdon for the committee.

Senate Education

May 10, 2005

2005-1379s

04/10

Amendment to HB 132

Amend RSA 189:13 as inserted by section 1 of the bill by replacing it with the following:

189:13 Dismissal of Teacher. The school board may dismiss any teacher found by them to be immoral [~~or incompetent~~], ***or who has not satisfactorily maintained the competency standards established by the school district***, or one who [~~shall~~] ***does*** not conform to regulations prescribed; provided, that no teacher shall be so dismissed before the expiration of the period for which said teacher was engaged without having previously been notified of the cause of such dismissal, nor without having previously been granted a full and fair hearing.

SENATOR BRAGDON: Thank you, Mr. President. After looking at the calendar, I am not 100 percent sure the amendment is what the committee passed and I move to table.

MOTION TO TABLE

Senator Bragdon moved to have HB 132 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 132, relative to grounds for dismissal of a teacher.

HB 151, requiring school districts to develop a school age nutrition and physical activity committee. Education Committee. Inexpedient to legislate, Vote 4-2. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move House Bill 151 inexpedient to legislate. The bill would force school districts to have a

committee to both monitor and set policies on school age nutrition and physical activity. Though the goals of the bill's supporters are laudable, reducing childhood obesity and promoting wellness, the Education Committee does not feel the bill would be an effective way to reach these goals. Most school districts are already pursuing the activities envisioned by the bill and it is unlikely that having yet another state mandated committee in the school district will further those efforts. The Education Committee asks for your support of the inexpedient to legislate motion. Thank you.

SENATOR FOSTER: Probably to nobody's surprise, I rise in opposition to the committee report of inexpedient to legislate. I won't go through the arguments that I made on the snack food bill that I brought in here. I beg to differ with the chairman just in this one respect. While certain school boards and school districts are looking at this issue, not all of them are. And the point of this bill, as I saw it, was to make a statement. This is an important issue that we ought to be all concerned about. As I mentioned in my remarks a few weeks ago, Governor Schwarzenegger in California is talking about it repeatedly, it seems every time I hear him on the radio. Governor Huckabee has written a book about his battle with obesity. Apparently he doesn't look...I guess he looks half the man he used to be. He has lost a tremendous amount of weight and, in that book, and in his promotion of that book, talks about the crisis of childhood obesity. Even if we haven't really realized what a trouble this issue is, the health insurers have. One of my constituents called me last night, railing about the health forms that he has to fill out. He said, "My God, they asked me what the weight of my two year olds were? Now why do you think they were doing that?" Because they are concerned about childhood obesity. The health insurers realize it is a problem that needs to be addressed, and they are even looking at effectively infants, because they know that down the road it is going to cost them tremendous amounts of dollars and they are putting it into their considerations as they look at risk. So I guess I am disappointed that this body doesn't view this as an important enough issue to have the state speak on it. Thank you very much, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the inexpedient motion. In 1973, I sponsored the School Feeding and Nutrition Act. That Act became law and has been in law ever since that time. As part of that bill, a nutrition education program was supposed to be introduced into every school so that youngsters found out about good eating habits. Now we have before us a group of youngsters. This is the age when good eating habits are formed. We know that obesity is a killer in this country. It is a killer. I must say to you, on a personal note, I have a brother, who this morning, is undergoing surgery in Boston. One of the problems that my brother has is he is grossly overweight. That has hurt him. His surgery this morning is very delicate and it is dangerous because he is overweight. Because of the fact that anesthesiologists are very concerned about putting overweight people under. It is a serious problem. Something we have to deal with. That is a health issue. That affects our longevity. What better place to introduce good eating habits, good nutrition facts, than at the school level? These youngsters are there. They are there for a period of time during the day. It just seems to me it is absolutely essential that we take advantage of this situation and introduce good habits. It is incum-

bent upon their longevity. We know that statistics show us that we are becoming an obese society, and that obesity is caused by our improper eating habits. God knows I battle the weight problem on a daily basis. I am not perfect in that situation. Old Governor Schwarzenegger played with steroids when he was fooling around. I am obviously, adamantly opposed to that. But I think the fact that something good can come out of a nutrition program is something worthwhile, and what better place to do it than in our schools. I served on a school board for ten years. I know what it is like to interact. Those kids need that guidance. One thing that really bothers me is we start them having lunch at ten o'clock in the morning because we have so many kids that we have to feed. They get a thirty minute lunch break. We run them through, over and over and over until all of the kids have had an opportunity to eat. Is that good? Is that good for digestion? I don't think so. These two young ladies can attest to that. What's the lunch period like at your school? De minimus, right? De minimus. And when I was a kid, we used to have to bring your lunch to school because there wasn't any cafeteria. So we have an opportunity to do something, we ought to do it. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. I think we're missing the point. I don't think there is anybody in this chamber that does not agree with the issue of obesity and good nutrition and good food. That's not what this bill is all about. This is a feel good bill. It does nothing. Interesting, if you look at the committee material here, this bill actually...we are charged with creating a policy. In other words, a committee you create, we are going to let the committee establish school policy. Committees don't establish school policy in my community. The school board establishes school policy. That is under state law. So we are saying that we're going to change the state law. We're going to give a committee the right to establish school policy. That is one reason this bill is inexpedient to legislate. Secondly, federal law already allows them to do this. There is nothing that says that they can't, as a school board, establish this as a priority, and establish a committee and do what you got to do to make an emphasis on this issue, which I think they should be doing. And some are, some aren't, but they should all be doing it. The other issue I thought was kind of interesting is, we are going to say that the school board itself is going to have to approve the sale of all foods on all school grounds. Not only in the cafeteria, but out on the tennis court, and wherever else you are on school grounds. Is that what school boards should be doing? I mean, they have the responsibility of performing an education. Where in education is that an issue where they should be having food police? Finding out what kids are eating? I don't think that is what we should be doing. So it is not about whether we support good nutrition. Please, don't let that be the focus of your thoughts. The committee wrestled with this because we do support good nutrition, I want you to know that. That is not a problem. But this bill is full of problems that you are going to create in terms of current state law and the authority of school boards. I just think it is inappropriate of us to interfere in that process. I would ask you to support the committee's recommendation of inexpedient to legislate. Thank you.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Barnes.

Seconded by Senator Gatsas.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Gatsas, Barnes Martel, Letourneau, Morse.

The following Senators voted No: Burling, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 17 Nays: 7

Committee report of inexpedient to legislate is adopted.

HB 240-FN, relative to psychotropic drugs and child protection. Education Committee. Inexpedient to legislate, Vote 5-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. I move HB 240 inexpedient to legislate. HB 240 is a piece of unnecessary legislation. The bill would prohibit public school personnel from recommending assessment for use of a psychotropic medication and would prohibit schools from requiring use of psychotropic drugs. The use of these medications, as with all medications, is a decision made by parents and medical professionals. This bill discriminates against mental health drugs. No one in the medical community testified in support of the bill. Testimony revealed that schools may not refuse entrance to a child for not being on psychotropic medication under current law, that many school districts have already addressed this issue, and that a more collaborate approach is in the best interest of the child. The Education Committee unanimously voted this bill ITL and asks that you do so as well. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I am going to rise in opposition to this motion. I think that New Hampshire has got the highest rate of psychotropic drugs administered to our school children, and I strongly disagree with what the Senator prior to me said. I remember when one of my children was forced upon to have Ritalin or not be able to attend school. Forced to take a drug that he didn't want to take and we didn't want to make him to take. I think that this bill is trying to get at that. I am going to vote against it. Thank you very much.

A roll call was requested.

The roll call request was withdrawn.

Committee report of inexpedient to legislate is adopted.

HB 301-L, relative to parent advisory councils for pupils with educational disabilities. Education Committee. Inexpedient to legislate, Vote 6-0. Senator Bragdon for the committee.

MOTION TO TABLE

Senator Bragdon moved to have HB 301-L laid on the table.

Adopted.

LAIID ON THE TABLE

HB 301-L, relative to parent advisory councils for pupils with educational disabilities.

HB 346-L, relative to the procedure for withdrawal from a cooperative school district. Education Committee. Ought to pass, Vote 5-1. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move House Bill 346 ought to pass. House Bill 346 amends the procedure for withdrawal from a cooperative school district and allows the town board which voted to undertake the withdrawal study to submit a minority report to the state Board of Education. In essence, the bill protects the minority town that is looking to leave a cooperative school district. Currently, it is easy for a group of towns in a cooperative school district to stonewall one town from leaving the district. This bill helps get at that problem. The Education Committee asks for your support of the motion of ought to pass. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I rise in support of this bill. The town of Mason has been in a position of having a philosophical difference from the other two towns that it is married to, which are Greenville and New Ipswich. This is an opportunity to allow them to make their own way. I ask you to support this bill with ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 456-FN, relative to inhaling toxic vapors. Education Committee. Ought to pass, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 456 ought to pass. HB 456 clarifies the law regarding inhaling toxic vapors. Currently, a judge can sentence a minor to the state hospital in Concord for a substance abuse program for inhalants. However, the hospital offers no such program. This law, if passed, will encourage judges to utilize more local programs for offenders and update a law that is a relic of the 1960s. The Education Committee asks for your support of the ought to pass motion. Thank you.

Adopted.

Ordered to third reading.

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers. Energy and Economic Development Committee. Ought to pass, Vote 4-0. Senator Burling for the committee.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move House Bill 174 ought to pass. House Bill 174 requires the Public Utilities Commission to adopt rules relative to electricity suppliers and utilities offering renewable energy options, and extends the portion of the system benefits charge due to programs for low income customers. House Bill 174 also repeals provisions that required all electric customers to be informed of the resource mix and environmental characteristics of their electric service and required the Public Utilities Commission to spend money to inform the public of the benefits of electricity generated from renewable energy sources. The committee heard testimony that the primary groups of people receiving services are senior citizens and families with small children. The committee also heard that this program...that with this program there is less pressure on towns to provide welfare services. A representative from the PUC testified that the funds for this particular program should be stabilized by the fall of 2005

and they plan to add people to the program as people currently served leave the program. The Energy and Economic Development Committee asks the Senate to please support our recommendation of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 215-FN, relative to water management. Energy and Economic Development Committee. Ought to pass with amendment, Vote 5-0. Senator Boyce for the committee.

Energy and Economic Development

May 11, 2005

2005-1404s

06/09

Amendment to HB 215-FN

Amend RSA 488:7 as inserted by section 1 of the bill by replacing it with the following:

488:7 Compliance.

I. Registration and withdrawal of water under RSA 488:3 shall be deemed to grant permission to the department to enter onto the registered property to review compliance with the provisions of the registration.

II. Upon obtaining credible information that any person is not registered in accordance with RSA 488:3, I and is withdrawing, discharging, or transferring a cumulative amount of more than 20,000 gallons of water per day, averaged over any 7-day period, or more than 600,000 gallons of water over any 30-day period, at a single real property or place of business, the department may obtain an administrative inspection warrant in accordance with RSA 595-B to determine compliance with the registration requirements.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 215 ought to pass as amended. House Bill 215 requires users who withdraw, discharge or transfer large amounts of water to register with the Department of Environmental Services and measure and report the amount of water withdrawn, discharged or transferred. The committee heard testimony that the fiscal note gives the Department enough money to fund the program and the effective date is one year out, which will give the Department enough time to educate citizens and businesses in New Hampshire about their new responsibilities. Some committee members were uncomfortable with certain language in the bill which allowed DES to walk onto anyone's property with no warrant if they merely suspected that someone was withdrawing water illegally. The committee amendment says that by registering to withdraw water, a person is consenting to the DES inspection. Without such permit and consent, the Department may inspect after obtaining a search warrant from a judge. The Energy and Economic Development Committee unanimously asks your support for the motion of ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire. Energy and Economic Development Committee. Ought to pass, Vote 3-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 288 ought to pass. As the bill's title indicates, HB 288 establishes a commission to effect the process for the town of Killington Vermont to become part of the state of New Hampshire. The commission would not be established until such time as the state of Vermont establishes a similar commission to work with New Hampshire to effect this change. The Energy and Economic Development Committee asks for your support of the ought to pass motion, although, was there going to be a floor amendment? What's the process there? Thank you.

SENATOR EATON (In the Chair): Thank you, Senator Bragdon.

Senator Clegg offered a floor amendment.
Sen. Clegg, Dist. 14

May 17, 2005
2005-1462s
05/04

Floor Amendment to HB 288-FN

Amend the bill by replacing section 2 with the following:

2 Composition of Commission; Terms. The commission shall be composed of 3 members, one of whom shall be appointed by the governor, one of whom shall be appointed by the senate president, and one of whom shall be appointed by the speaker of the house of representatives. Commission members shall be residents and voters of New Hampshire, and shall serve until their successors are appointed. Members of the commission shall serve without compensation.

SENATOR CLEGG: Thank you, Mr. President. I'd like to offer floor amendment 1462. What the floor amendment does is it takes out the payment for mileage. Since we all know how much we like to volunteer in the state of New Hampshire, there really is no need to put money in there, and we'd like Killington to know how frugal New Hampshire really is. We ask for your support.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Barnes is in opposition to HB 288-FN.

HB 315, relative to best available technology for air pollution control. Energy and Economic Development Committee. Ought to pass, Vote 4-1. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move House Bill 315 ought to pass. House Bill 315 requires the use of best available technology for air pollution control. The purpose of the bill is to establish specific requirements for facilities combusting non-virgin materials and emit persistent bio-cumulative toxins (PBTs) substances. The committee heard

compelling testimony from DES that it is reasonable to require facilities that combust these fuels to install the best available control technology in order to minimize the health and environmental impact of PBTs being emitted into the air. The Energy and Economic Development Committee asks your support for the motion of ought to pass on House Bill 315. Thank you, Mr. President.

Adopted.

Ordered to third reading.

Senator Foster rule #42 on HB 315.

Recess.

Out of recess.

HB 460-FN, relative to the reimbursement to certain providers by the bureau of emergency communications. Energy and Economic Development Committee. Re-refer to committee, Vote 3-2. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move that HB 460 be re-referred to the committee. HB 460 seeks to limit cell phone companies' cost recovery efforts for Enhanced-911 services to only those invoices submitted before April 1, 2005. Enhanced-911, also known as E-911, is basically the system that allows the 911 operators to know what your phone number is and where you're calling from – a somewhat tricky issue with cell phones. A brief history, if I may. In 1996, the FCC ordered cell phone companies to provide E-911 services, phased in over a period of years, and also required that states establish a way to allow the cell phone companies to recover their costs. It is this cost recovery that is at issue here today. In 1997, one year later, the New Hampshire Legislature amended its 911 statutes to do three things: 1) It required cell phone companies to provide E-911 services. 2) It provided a means for cost recovery, specifically stating that the cell phone companies, "shall be entitled to reimbursement of the reasonable expenses incurred to accomplish providing E-911 service."; and finally, they enacted a surcharge of 42 cents per month on every cell phone number to help fund the state's development and operation of an E-911 system, to include cost recovery for cell phone companies. In 1999, the FCC removed the requirement that states provide cost recovery, but the FCC also expressed continuing support for existing cost recovery mechanism. New Hampshire left their cost recovery statute intact. It was no longer a requirement, but we left ours intact. In 2001, four years after the state started collecting the cell phone surcharge, cell phone companies began updating their networks to provide these services in compliance with the timelines established by the FCC. Finally, in 2005, House Bill 460 arrived in the Senate, where we learned that, despite collecting an E-911 surcharge from every cell phone user for eight years, with the total probably approaching \$10 million, not one dime has been paid to reimburse cell phone companies for their E-911 expenses. It is our belief that an expectation of cost recovery was created by the legislature in 1997, and before we start dismantling the program which we feel does make sense, somebody has to step up to the plate and start honoring the commitment made to our corporate citizens.

Let me add, though, that the cell phone companies are not without blemish in this situation. Some have submitted what appear to be ridiculously high bills to the E-911 Commission, and the commission should use its

statutory authority to only reimburse for those costs it deems valid and reasonable. Some companies have submitted incomplete information and need to get their act together as well. Re-referring this bill will let the E-911 Commission know that we are looking for some action on this matter before considering their request to dismantle the cost recovery program. It will also let the cell phone companies know that we expect them to work with the Commission to resolve the matter. Though the opponents of re-referral would have you believe this bill must pass today or tax increases are sure to follow, re-referral still gives the option of passing the bill in January. We strongly believe that if the E-911 Commission exercises its statutory authority to approve only reasonable and valid claims, and exercises fiscal self-restraint, the balance in the fund would easily cover applicable charges in the meantime with no need for a tax increase. After all, would Senator Boyce and myself approve of something that was going to lead to a tax increase? Ask yourself that question. Both sides need to realize that, come next January, if the Senate finds this issue has not been resolved, we may take action that will make neither side happy. Please support the committee recommendation of re-refer. Thank you.

SENATOR EATON (In the Chair): Did Senator Gottesman write the *Readers Digest* version?

SENATOR BRAGDON: He offered to help. I said it was quite lengthy enough.

SENATOR BARNES: Thank you, Mr. President. Senator, this has been in place for ten years. Is that what I just heard you say?

SENATOR BRAGDON: Eight years they have been collecting the money.

SENATOR BARNES: I am sorry, eight years. Did I also hear you say that there has been no money paid and there is \$10 million sitting there that has been collected, and not a penny has been paid?

SENATOR BRAGDON: Not a penny has been paid, although the \$10 million is to cover the operation of the system as well as the development. So the whole thing isn't for that.

SENATOR BARNES: So would you believe that this is something that we do. We pass laws here in the legislature and things don't happen even though we pass them, such as EZ Pass, the Purple Heart Highway. This type of thing falls under that?

SENATOR BRAGDON: I heard that has happened. Yes.

SENATOR BARNES: We pass it but it doesn't happen. It doesn't mean anything.

SENATOR BRAGDON: That is my impression, sir, and I think we need to exert a little leverage to make sure it does.

SENATOR BARNES: Thank you.

SENATOR GATSAS: Senator Bragdon, I am reading the committee report. Earl Sweeney from the Department of Safety testified saying that the legislation is needed for consumer protection. Can you tell me why he thought that?

SENATOR BRAGDON: I assume he thought that because, if we didn't stop the bills from coming in, and they just approved all the bills that came in, it would require a surcharge. But those who recommend re-referral

believe that reasonable and valid charges can still be approved and can be absorbed within the existing E-911 Commission Fund, with some fiscal restraint on part of the Commission with no need for a surcharge.

SENATOR GATSAS: I thought that was Star Wars. Thank you, Mr. President. It says here that, because they are not under scrutiny of the Public Utility Commission, that they would be able to pass them on directly to the customer and that is why this bill is needed.

SENATOR BRAGDON: And Senator, I would say that just about everybody in the committee agrees that that's probably an appropriate direction to go in the future. The problem that we have is, without that leverage there to force the Commission to actually start acting on these, we don't think anything is going to happen. So I think most everybody in the committee thinks it's a good thing in the long run, to get these charges to be paid for by the companies. But there is an expectation of reimbursement that was created in 1997 and we failed to live up to that obligation.

SENATOR BURLING: Thank you, Mr. President. Let me start by saying that this is one of the odder votes. It was Boyce, Bragdon and Burling in the committee. I think there are several themes that tied our vote together. Greatest among these was the notion that a little legislative self-restraint might allow the parties to this dispute the opportunity to sit down at a table, figure out what is fair and appropriate, given the **TAPE CHANGE** is no result has been brought forward. We are free to take the appropriate action at that time. It is very important, it seems to me, that we, as a Senate, stand for the proposition that parties who are engaged in a private dispute, even one that has massive financial consequences, should be pushed to resolve that dispute between and among themselves before they come change the state law to accommodate their side or the other. I was a member of House leadership when all of this started, lo those many years ago, and I remember the enthusiasm with which this state addressed the issue of E-911. I also remember that promises were being made at a remarkable rate to the companies that provided phone service. And I think the parties now in charge, on behalf of the state, have an obligation to sit down, open their ears to what these companies have to say, and accept the duty to negotiate in fair process to try to reach a resolution. So I'm completely in support of the notion of re-referral, to exercise some legislative restraint. Then, in January if we need to, act as appropriate. Thank you, Mr. President.

SENATOR ODELL: Thank you, Mr. President. I rise in opposition to the re-refer motion and ask that you defeat that motion so that I may introduce a motion of ought to pass and send this to Finance. As Senator Burling said, there are massive financial consequences involved in this. We ought to do the right thing and that is to act thoughtfully about this. You've heard about wireless telephone companies. Who are we talking about? Seventeen wireless telephone companies, unregulated by the Public Utilities Commission, providing this wireless service to the people of New Hampshire. Seventeen. Fourteen of them have no bills in front of the Public Utilities...in front of the 911 Commission. There not charging anything for having implemented 911. One company, \$25,000 according to the testimony we heard. Another company, the largest provider, a couple of hundred thousand dollars. Then one company we used to know as AT & T, shows up recently under the name Singular and says, \$6 million. Not for what's been done, \$6 million for what's been done and

\$6 million in the future. Massive financial consequences. No one has been an advocate of the state of New Hampshire standing up to its responsibilities more than I have been. I get irritated when we do legislation here, and then we back off from it. We say, "Oh, we didn't mean that." Testing for civics in the law, but we don't fund it. On and on, on and on, on and on. I am simply asking today to think of it this way. Before and after the state of New Hampshire, through the 911 Commission has a responsibility to settle up on a reasonable basis with the three companies that have bills before them. It's my understanding it was not part of the test...I think it was part of the testimony, that in the case of the one in the middle, they are close to a resolution. They are working on this. That's their responsibility. Nothing we can do here today, nothing re-referred, none of that stuff is going to make them work any better together or any less together. We are not going to be threatening the 911 Commission. If you've seen the letters that have been circulated, obviously we are not. That is the past. This legislation has nothing to do with that. What we are saying today in asking for you to defeat this re-refer is that we go forward. Don't let the 911 Commission be held hostage to a continuing barrage of bills, mostly from one company, on and on and on, and wipe out completely our fund. What will that mean? We will have to add a tax. We will have to add a fee. We're going to have to do something. But when we do that, who is going to pay it? It's not going to be just one company's bills...subscribers..., all the subscribers for 17 companies, including the fourteen companies that are not asking any reimbursement. That is the inevitability. That's why I say we need to send this to Finance. You heard Senator Burling's words, "massive financial consequences here." So I ask you to think about the possibility of defeating the re-refer, sending it to Finance. Let Finance work through these numbers and see what the options are. Maybe there will be some action within the 911 Commission and the principle company that we are talking about today, and we will be back in a couple of weeks with a motion of re-refer, ITL, ought to pass. I think, with the massive financial consequences involved here, it's important that we do that. I also want to use an example. One of our finest companies in my region is Crown Point Cabinetry. Independent, unregulated company. Through the door, announced or unannounced, comes OSHA. And they say, "We need a new fan over here, we've got a new exhaust system, take that sawdust out." They leave, the company is mandated to do it. Crown Point doesn't come down here and say, "We need to collect that money from somebody. Will you collect it from our customers for us or help us by collecting it on a bill and then sending it to the state and then we will send it back to pay for the fan?" These companies want to be unregulated; let them be unregulated. Let them step up in the future, settle up from the past, in the future, come on, let's be big boys. Don't try to thread this needle, picking up a buck here and a buck here, and using both the unregulated system and the non-regulated system to their only, to their profit desires. This is an opportunity for us to stand up for the subscribers. It is time to stand up for the 911 process that you all have been involved in. It is also a time to stand up for the state of New Hampshire doing what's right, and that is to settle on the reasonable cost of those three companies that have bills on the table right now. Thank you, Mr. President.

SENATOR BURLING: Thank you, Senator, for taking my question. I want to focus on the issue of senatorial restraint and the impact on the ongoing negotiation situation. We talked about this at length in the committee, and I would like to kind of get to your thoughts on it. If we involve

ourselves in this discussion, between and among the state and the three companies that have proper bills, do we not dramatically shift the nature of the negotiation by passing this bill? Aren't we using state power to change their negotiation? And, is that something we should be doing as Democrats and Republicans and Representatives who talk about the interests of business in this state?

SENATOR ODELL: Thank you. For those bills that are there and those situations that took place that are on the table now, let them sort it out. It is a dispute between three unregulated companies and the state of New Hampshire. Let them work it out. I've never suggested we get involved in that. However, moving forward, let's let those companies do what we ask other unregulated businesses to do, and that is if they have to charge because they are inefficient putting in the 911, a certain amount of money into their price structure, they should go ahead and do it. That is up to them. This is a free market economy. They can't have it both ways, or at least, I don't think they should have it both ways.

SENATOR GATSAS: Thank you, Mr. President. Senator Odell, correct me if I am wrong. I think I sat on Finance with you last year and we heard the 911 Commission come in, and I think they were looking for an increase in the tax that was going to come back to pay for some of those funds of moving a plan in Laconia or another one. I think the committee at that time said "I don't think so. I think you need to settle up your debts in the past." So I think the Senate, at that time, took a pretty good position that we weren't going to do that. But correct me if I am wrong. Isn't there a fund...isn't there a reserve fund to take care of some of these expenses?

SENATOR ODELL: Thank you. There is a fund that is used for the operations of the 911 Commission that comes from the forty-three cents per month that is on each subscriber's bill. That is my understanding.

SENATOR GATSAS: So I guess the consumer protection that we're talking about is, if we don't get some sort of negotiated deal, they want to make sure they are protected, that that rate can be passed onto the consumer and his bill is going to go up at any cost, at any time.

SENATOR ODELL: If I understand your question, Senator Gatsas, that is also the companies who are coming to us for reimbursement, as well as those companies, all the subscribers, that have not come to us for any reimbursement.

SENATOR GATSAS: Thank you.

SENATOR ODELL: If we don't turn this off, Senator Gatsas, what's going to happen is, if we were in business, we'd be coming up with bills immediately, because if I am one of those fourteen companies that is left out of there, I am going to be in line. If this gets re-referred, they'll be in line next week. I wouldn't blame them.

SENATOR FOSTER: Senator Odell, so we know what we are talking about. In the period from today, to say, the third or fourth week in January, if we were not to pass the bill, but instead re-referred it so it would presumably come back in January, what kind of costs are going to accrue to the state during that period or through this process?

SENATOR ODELL: Well if it...thank you, Senator Foster. I'll just take one company, if in fact it is accurate, that they are talking about \$6 million a year. We'd be talking about \$3 or \$4 million, maybe \$5 million before we would be able to take action. In other words, if we come back

with a bill re-refer in January, half a year would be \$3 million. That would be, I think, other companies may be participating at the same time. That's why this legislation was crafted by the House to set a date. Is it an arbitrary date? Certainly. But a date was picked before which the legislature's not involved. Let the state of New Hampshire deal with the companies that have bills in, but after that, allow the companies the freedom and the flexibility as unregulated businesses, to do what other unregulated businesses, and that is these mandates, but it into their price structure or however they want to handle it.

SENATOR FOSTER: Thank you.

SENATOR JOHNSON: Senator Odell, just for clarification, what is your recommendation?

SENATOR ODELL: My recommendation, Senator Johnson, would be to vote no on the re-refer motion. I will then make a motion of ought to pass and vote for that motion, and send it to Finance.

SENATOR JOHNSON: Thank you, Senator.

SENATOR ODELL: Thank you.

SENATOR BRAGDON: Thank you, Mr. President. Senator Odell, Senator Foster had asked what the cost would incur and you mentioned the amounts of the invoices we would receive. But, isn't it true that the 911 Commission has the statutory authority to review those bills, and to determine only those charges that are reasonable and valid, and only pay on those?

SENATOR ODELL: That's correct, but those would be the expenses incurred until such time as they were determined to be reasonable or unreasonable. The other thing we heard in testimony, as you may recall, is that there is potentially the opportunity for suing the state of New Hampshire. A) if we don't respond quickly, and secondly, if there is a dispute over the reasonableness or unreasonableness of the bills. Remembering that the 911 Commission is set up as an emergency response vehicle. It is not set up to be reviewing the 911 technical infrastructure of telephone companies. So they have to hire consultants. That's one of the reasons for the delays, hiring consultants to look over the bills they have, making sure that a bill for a facility in the Southwest corner of New Hampshire that services Massachusetts, Vermont and New Hampshire, is distributed in terms of the cost equally amongst the states that are participating. So there is a lot of issues there, as you well know.

SENATOR BRAGDON: But isn't it true that the statute allows the Commission to recover the costs of those consultants and people they use to determine the adequate costs, to recover those costs themselves from the providers? You had mentioned the consultants that would have to be hired to help find what the true costs are. Isn't it true that the carriers have to pay the costs for those consultants?

SENATOR ODELL: I think they get paid out of the fee. That's my understanding from our testimony. That would be taken out of the forty three cent a month fee.

SENATOR BRAGDON: In RSA 106-H:8, where it says "The bureau may utilize services of consultants to assist in reviewing these, and may seek to recover the expenses from the provider." Would that change your mind on that answer?

SENATOR ODELL: No, because I think the testimony that we heard was the anticipation is that they would have to use the fee.

SENATOR BRAGDON: I see.

SENATOR ODELL: Yes. Thank you.

A division vote was requested.

Yeas: 9 - Nays: 14

Motion failed.

Senator Odell moved ought to pass.

Adopted.

SENATOR EATON (In the Chair): My apologies, I jumped...Senator Burling wishes to speak for a second.

SENATOR BURLING: Just one very brief point that troubles me greatly about this process. April 1, 2005. We are passing ex post facto legislation, and, whatever you think about the justice of all of this, if there is a claim which may be brought by any of the three companies for reimbursement by the state of New Hampshire, for the period of April 1st to whenever this thing passes and gets signed into law, we've just taken away, without compensation, the rights of one of the corporate citizens...three of the corporate citizens of the state of New Hampshire. How can we do that? This is a serious violation. We should not be doing this. Another reason why we should have studied this resolution further.

SENATOR ODELL: Mr. President, wouldn't the Finance Committee have the opportunity to address that issue?

SENATOR EATON (In the Chair): The Finance Committee will address it very thoroughly.

SENATOR ODELL: Thank you.

Referred to the Finance Committee (Rule #26).

Recess.

Out of recess.

HB 421, relative to effective dates. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

May 11, 2005

2005-1405s

03/09

Amendment to HB 421

Amend the bill by replacing all after the enacting clause with the following:

1 Effective Dates. RSA 14:9-a is repealed and reenacted to read as follows:

14:9-a Effective Dates.

I. Except as provided in paragraphs II and III, and except for resolutions, which shall take effect upon their passage, each law passed by the general court shall take effect 60 calendar days following passage, excluding the date on which it is signed by the governor, or the last date on which the general court acts on the matter, as the case may be.

II. The office of legislative services shall include a section in each bill drafted for introduction specifying the act's effective date, if passed. The effective date section shall indicate that the law shall take effect as follows:

(a) Each law affecting judicial practice and procedure, or establishing or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions, shall take effect on the January 1 following passage.

(b) Each law affecting local property taxes shall take effect on the April 1 following passage.

(c) Each law affecting state tax laws and statutory fees shall take effect on the July 1 following passage.

(d) If the law affects only one particular person, town, city, or political subdivision, it shall take effect upon its passage.

(e) Each law making appropriations shall take effect on the July 1 following passage.

(f) Each law establishing a legislative committee shall take effect upon its passage.

(g) All other laws shall take effect 60 days after the bill's passage or at such other time as the bill's prime sponsor shall indicate in writing.

III. A law may be repealed in the bill enacting the law, with the repeal taking effect at a prospective date specified in the bill.

IV. Unless specifically provided otherwise, each law enacted by the general court shall take effect at midnight, 12:00 a.m., on the date the law becomes effective.

V. The secretary of state shall record the date each law was enacted and its effective date on all enrolled and printed copies of such law, and such record shall be conclusive.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR KENNEY: Thank you, Mr. President. Mr. President, I move House Bill 421 ought to pass with amendment. The bill deals with effective dates for legislative bills. The Office of Legislative Services has a set of guidelines that they follow to determine the effective dates for bills. The amendment takes out section three which would require an amendment to change the effective date of a bill. The Executive Departments and Administration Committee asks for your support on the motion of ought to pass. I have a follow on a floor amendment. Thank you, Mr. President.

Amendment adopted.

Senator Kenney offered a floor amendment.

Sen. Kenney, Dist. 3

May 19, 2005

2005-1504s

03/04

Floor Amendment to HB 421

Amend the bill by replacing all after the enacting clause with the following:

1 Effective Dates. RSA 14:9-a is repealed and reenacted to read as follows:

14:9-a Effective Dates.

I. Except as provided in paragraphs II and III, and except for resolutions, which shall take effect upon their passage, each law passed by

the general court shall take effect 60 calendar days following passage, excluding the date on which it is signed by the governor, or the last date on which the general court acts on the matter, as the case may be.

II. The office of legislative services shall include a section in each bill drafted for introduction specifying the act's effective date, if passed. The effective date section shall indicate that the law shall take effect as follows or at such other time as the bill's prime sponsor shall indicate in writing:

(a) Each law affecting judicial practice and procedure, or establishing or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions, shall take effect on the January 1 following passage.

(b) Each law affecting local property taxes shall take effect on the April 1 following passage.

(c) Each law affecting state tax laws and statutory fees shall take effect on the July 1 following passage.

(d) If the law affects only one particular person, town, city, or political subdivision, it shall take effect upon its passage.

(e) Each law making appropriations shall take effect on the July 1 following passage.

(f) Each law establishing a legislative committee shall take effect upon its passage.

(g) All other laws shall take effect 60 days after the bill's passage.

III. A law may be repealed in the bill enacting the law, with the repeal taking effect at a prospective date specified in the bill.

IV. The office of legislative services shall, at the request of the sponsor of an amendment, include in the amendment the effective date requested by the sponsor of the amendment.

V. Unless specifically provided otherwise, each law enacted by the general court shall take effect at midnight, 12:00 a.m., on the date the law becomes effective.

VI. The secretary of state shall record the date each law was enacted and its effective date on all enrolled and printed copies of such law, and such record shall be conclusive.

2 Effective Date. This act shall take effect 60 days after its passage.

SENATOR KENNEY: Yes, I would like to offer floor amendment 1504, Mr. President. Thank you, Mr. President. Floor amendment 1504 is basically some technical corrections that pushes the language of the bill's prime sponsor to line 11. And secondly, it also clears up who can offer the effective date for legislation. The way it has been rewritten is that any legislator or committee member could offer the effective date of that legislation once it's passed the body. Thank you, Mr. President.

SENATOR FOSTER: Senator Kenney, I just want to make sure I understand the amendment. What we...is the way it's going to work now, is if I go in there and I ask for an effective date, I get it? But if I don't do anything, it defaults to these rules so that Legislative Services, when they are drafting, looks at the law and says, "Okay, it's this kind of bill, this is the effective date." But if I went in there and said, "No, I don't like that effective date, make it effective immediately, make it effective next year." I'd have that discretion?

SENATOR KENNEY: Thank you for the question, Senator Foster. It does really two things. It allows Legislative Services to manage the legislation and therefore what it states is that, if a piece of legislation were to pass, it would be sixty days effective, from when it would be passed. If

the individual legislator or the committee decided that they needed an effective date beyond sixty days or another date that they would be allowed to do that. So it does two things. It still gives us the independence to ask for that effective date, and also allows Legislative Services to have some kind of management policy in place whereby it would take sixty days after the passage.

SENATOR FOSTER: So just so I am clear though. Does that mean that no law can become effective prior to sixty days after signature or could it? I wasn't sure about your answer.

SENATOR KENNEY: No. I mean, whatever the committee or the body decides when the effective date is, as long as the sponsor or the committee offered that, that they could do that.

SENATOR FOSTER: Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Kenney for the committee.

Senate Executive Departments and Administration

May 11, 2005

2005-1403s

05/03

Amendment to HB 428

Amend the bill by replacing section 10 with the following:

10 Pease Development Authority; Additional Powers and Duties; Power to Set and Collect Fees for Mooring Permits, Not Slips. Amend RSA 12-G:42, VI and VII to read as follows:

VI. Administer and enforce permit programs for the placement and use of moorings [~~and slips~~] in state tidal waters, including waiting lists for such permits.

VII. Set and collect fees for mooring [~~and slip~~] permits and waiting lists for such permits. [~~The authority shall establish fees for slips in ports, harbors, and state tidal waters. Fees shall not be charged for slips at industrial piers along the Piscataqua River or at state-owned piers in harbors. The fees for slips shall be paid into the harbor dredging and pier maintenance fund established under RSA 12-G:46.~~]

Amend the bill by replacing sections 13 and 14 with the following:

13 Pease Development Authority; Additional Powers and Duties; Power to Adopt Rules Relative to the Setting and Collecting of Fees. Amend RSA 12-G:42, XI to read as follows:

XI. Adopt rules, after obtaining prior approval by the fiscal committee of the general court and the board, relative to the setting and collecting of fees authorized under RSA 12-G:38, relating to foreign trade zones; RSA 12-G:42, IV and V, relating to wharfage, dockage, and other marine terminal operations; RSA 12-G:42, VI, relating to moorings[~~, slips,~~] and wait lists; RSA 12-G:42, IX, relating to **state-owned** commercial piers [~~identified in paragraph IX and other division property~~] **and associated facilities**; RSA 12-G:49-a, relating to pilotage; and any other matter

necessary for the proper administration of the division with respect to the setting and collecting of fees. The rules adopted under this paragraph shall not be subject to the provisions of RSA 541-A, so as to provide the authority with the ability to maximize revenues and to adjust fees according to market conditions and trends as is the common practice in private industry. Fees established pursuant to this paragraph shall be consistent with the following criteria:

(a) Fees relating to the establishment and operation of foreign trade zones shall be designed to recover a reasonable portion of budget expenses consistent with the purposes of RSA 12-G:38. The general court does not intend that such fees cover all of the budget expenses associated with the implementation of RSA 12-G:38.

(b) Fees relating to wharfage, dockage, and other marine terminal operations shall be comparable with the fees for wharfage, dockage, and other marine terminal operations assessed by other port authorities and other marine terminal operators and stevedores in the United States.

(c) Fees relating to the mooring permits and mooring wait lists shall be designed to recover all of the budget expenses associated with implementation of the mooring permit and wait list system as well as a reasonable portion of the budget expenses consistent with the purposes of RSA 12-G:42, III, VI, and VII; RSA 12-G:43, I(a) and (c); and RSA 12-G:50.

~~[(d) Fees relating to slips shall be designed to be proportional to the fees for moorings established under subparagraph (c).]~~

~~[(e)]~~ (d) Fees relating to *state-owned* commercial piers and ~~[use of other division property]~~ *associated facilities* shall be established giving due consideration to the fees for use of similar privately-owned facilities.

[(f)] (e) Fees relating to pilotage shall be comparable with the pilotage fees assessed by other port authorities in the United States.

14 Administrative Rules Relative to Permits; Reference to Slips Deleted. Amend RSA 12-G:42, X(c) to read as follows:

(c) The terms, conditions, and procedures under which the division shall issue, suspend, revoke, deny, or approve permits required under this chapter for moorings ~~[and slips]~~.

Amend the bill by inserting after section 16 the following and renumbering the original 17 to read as 18:

17 Repeal. RSA 12-G:2, XXII-a, relative to definition of "slip," is repealed.

2005-1403s

AMENDED ANALYSIS

This bill:

I. Defines "state-owned commercial pier," "associated facilities," "business-use pier," and "recreational-use pier," and clarifies references to these terms.

II. Clarifies references in RSA 12-G to piers, wharves, and docks and to the Foreign Trade Zones Act.

III. Removes the Pease development authority's authority to establish slip fees in state tidal waters.

IV. Clarifies the Pease development authority's authority to establish permit programs for vessels securing to or berthing at and for vehicles parking at state-owned piers and associated facilities and to adopt rules to implement such programs.

V. Grants Pease development authority the authority to remove abandoned or illegally parked vehicles, trailers, and other equipment.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 428 ought to pass with amendment. This bill does several things. First, it defines state-owned commercial pier, associated facilities, business-use pier, and recreational-use pier, and clarifies references to these items. Secondly, it clarifies references into RSA 12-G to piers, wharfs and docks and into the foreign trade zone act. Thirdly, it clarifies the Pease Development Authority's authority to establish a permit program for vessels securing to or berthing at and for vehicles parking at state-owned piers and associated facilities and to adopt rules to implement such programs. Fourth, it grants the Pease Development Authority the authority to remove abandoned or illegally parked vehicles, trailers, and other equipment. Lastly, the committee amendment eliminates slip permits and fee programs under the PDA. The committee asks for your support. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Senator Kenney, throughout the bill we changed the designation from "free trade zone" to "foreign trade zones." What's the implication of that?

SENATOR KENNEY: That's a good question, Senator D'Allesandro. My understanding was just terminology. I am not sure if there is really any implication in that.

SENATOR D'ALLESANDRO: Again, based on the hearings, etc., it does nothing to interrupt the kind of action that can take place at that port with regard to trade?

SENATOR KENNEY: That's my understanding, Senator D'Allesandro.

SENATOR D'ALLESANDRO: Thank you.

SENATOR GREEN: Senator Kenney, thank you. I am reading the record on the hearing report. What concerns me here is the people, a lot of the people who testified were testifying because of the new slip fees. What are those and how much are they increasing?

SENATOR KENNEY: My understanding, Senator Green, is the slip fees in the amendment are being taken out in its entirety. Most...all states around the country do not offer a slip fee. Therefore that was really impetus for the amendment to just take that all out together.

SENATOR GREEN: **TAPE INAUDIBLE** fees when you put the amendment in, is that correct?

SENATOR KENNEY: Correct. And just for the body, a "slip" is basically 25 feet long, 8 wide, 3 deep, up to the normal high tidal mark. It is just that place in between the piers where the boat comes in and launches itself.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 687-FN, relative to free tuition at New Hampshire public institutions of higher education for children of veterans who die while on active duty or from a service-connected disability. Finance Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

Senate Finance
May 18, 2005
2005-1473s
05/09

Amendment to HB 687-FN

Amend RSA 193:19 as inserted by section 1 of the bill by replacing it with the following:

193:19 Purpose of Appropriations. The sums appropriated under the provisions of this section shall be used for the sole purpose of contributing to the payment of board, room rent, books and supplies, at a New Hampshire public institution of higher education, for veteran's natural or adopted children between the ages of 16 and 25 years, who are legal residents of the state at the time of application, whose parent served on active duty in the armed services of the United States from December 7, 1941 to December 31, 1946; or from June 27, 1950 to January 31, 1955; or from February 28, 1961 to May 7, 1975; or from August 2, 1990 through a final date of the Gulf War conflict to be prescribed by Presidential proclamation or law; or in any operation not otherwise covered by this section for which the armed forces expeditionary medal or a theater of operations service medal, as defined in RSA 72:29, has been awarded to the veteran, and the veteran, who was a New Hampshire resident at the time of his or her death, died while on active duty during the service described above. Not more than \$2,500 shall be paid under this section to any one student in any one year, provided that no individual shall be eligible to receive such benefits for a period of more than 4 years.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 687 ought to pass. I am going to stand now and ask you to vote down the committee amendment. New information has come forth that showed that we made the incorrect amendment and would request that you pass the bill unamended as it has been since 1943. Thank you.

Amendment failed.

The question is on the motion of ought to pass.

SENATOR D'ALLESANDRO: I would like to make a quick statement. As Senator Clegg points out, there was some information that came to light after we worked on the amendment, because we thought the amendment was a good one at the time. But what we found out afterwards was that, in 1943, a law had been enacted, which covered servicemen, and that by adjusting the amendment, we negated the law that was passed in 1943 and that was not the intent of either the person who offered the amendment or the intent of the legislation. So by removing that and referring it back to the original bill, what we have done is we followed the intent of the law as proposed in 1943 and brought this new situation to life. I think that is important. Everyone is in favor of doing the right thing and this takes care of that. Thank you, Mr. President.

SENATOR KENNEY: Thank you, Mr. President. I just wanted to highlight that the State's Veterans' Advisory Committee unanimously supported House Bill 683 unamended and that they think it was a good piece of legislation, and they want to thank the body to support this.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

HB 43, relative to state employees appearing before the legislature. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 43 ought to pass. This bill requires state employees appearing before the legislature to wear their employee identification badges. The bill merely moves the current statute in RSA 15 to another chapter. The Internal Affairs Committee requests your support of this legislation.

Adopted.

Ordered to third reading.

HB 270, relative to procedures of the legislative ethics committee. Internal Affairs Committee. Re-refer to committee, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move that House Bill 270 be re-referred to committee. The bill sought to establish requirements and procedures for disqualification and recusals by the members of the Legislative Ethics Committee. After talking with the Secretary of State, he felt that this should be worked on further and that the bill was not ready to go forward at this time. The Internal Affairs Committee requests your support of re-referral. Thank you.

Adopted.

HB 270 is re-referred to the Committee on Internal Affairs.

HB 351, relative to the time for counting absentee ballots. Internal Affairs Committee. Inexpedient to legislate, Vote 4-1. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move House Bill 351 inexpedient to legislate. This bill sought to change yet again the time for counting absentee ballots. There are other bills in the House that also deal with the election process and the committee felt there is no need to enact this bill at this time. Therefore, the Internal Affairs Committee requests your support on the motion of ITL. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 362, relative to statutes to be posted at polling places. Internal Affairs Committee. Ought to pass, Vote 5-0. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 362 ought to pass. The bill updates the list of voting related statutes that must be posted at the polling places on voting day. It removes statutes which pertain to rights not typically exercised that day and adds statutes

which do address voting day polling place activity. The Internal Affairs Committee asks your support of the unanimous ought to pass recommendation.

Adopted.

Ordered to third reading.

HB 363, relative to parking at polling places. Internal Affairs Committee. Inexpedient to legislate, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 363 be found inexpedient to legislate. This bill sought to require parking at polling places. Testimony in the committee indicated that, for some, this would clearly be an unfunded mandate. The federal government under HAVA is already looking at the availability of parking at polling places. There is no need for this statute to be on the books. Therefore, we recommend inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 365, relative to recount fees. Internal Affairs Committee. Re-refer to committee, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move that House Bill 365 be re-referred to committee. This bill sought to clarify the fees that would be paid in general election recounts and the timing of that payment. After meeting with the Secretary of State, there clearly is a need to address the matter, but there is no agreement yet on what the correct approach is. The committee has legitimate concerns and does want the opportunity to work on the issue. Therefore, the Internal Affairs Committee requests your support of the re-refer motion. Thank you.

Adopted.

HB 365 is re-referred to the Committee on Internal Affairs.

HB 214, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

Senate Judiciary

May 11, 2005

2005-1396s

09/10

Amendment to HB 214

Amend the title of the bill by replacing it with the following:

AN ACT permitting the parents of a sexual assault victim to remain with the victim during trial proceedings.

Amend RSA 632-A:6, V as inserted by section 1 of the bill by replacing it with the following:

V. In any sexual assault case under RSA 632-A where the victim is 16 years of age or younger, and the defense has listed as a witness or subpoenaed a parent or parents to testify in the case and requested that the parent or parents be sequestered, the court shall appoint a guardian ad litem to determine the best interests of the minor victim. The guardian ad litem shall make a recommendation to the court, based on the preferences and best interests of the victim, as to whether the parent or parents should be permitted to sit with the victim in the court room during the duration of the trial.

2005-1396s**AMENDED ANALYSIS**

This bill permits the parents of a sexual assault victim who is 16 years of age or younger to remain with the victim during the trial, upon recommendation of a court-appointed guardian ad litem.

SENATOR FOSTER: Thank you, Mr. President. I move HB 214 ought to pass with amendment. This legislation is similar to that passed by this body last year, but was lost in the Committee of Conference. The bill provides that the court allow parents or guardians of a sexual assault victim to remain with the child during the trial. Unfortunately, sometimes a defense attorney will name the parents as possible witnesses in the trial and seek to have them sequestered. The proposed amendment allows the Guardian Ad Litem to make a recommendation to the judge as to whether or not the parents or guardians should remain with the child. The Judiciary Committee recommends that the bill be adopted with amendment and asks for your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 584, relative to evidence of admissions of liability in medical injury actions. Judiciary Committee. Ought to pass, Vote 6-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move House Bill 584 ought to pass. This bill is sometimes called the "I'm Sorry Legislation" that makes certain statements, written or in actions, that express sympathy or compassion relating to the pain, suffering or death of an individual that are made to that individual or the individual's family inadmissible as evidence of an admission of liability in a medical injury action. Plain commonsense tells us that when an unfortunate error or outcome occurs in the practice of medicine, having the doctor express his or her sympathy and concerns helps the patient or their family deal with the situation. This legislation has been adopted or is being considered now in 13 states and is felt to have an impact of helping reduce the number of medical malpractice claims that have been filed. The Judiciary Committee unanimously recommends that this legislation be adopted and asks for your support. Thank you.

Adopted.

Ordered to third reading.

HB 275, defining farmers' market. Public and Municipal Affairs Committee. Ought to pass, Vote 3-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 275 ought to pass. House Bill 275 was introduced on behalf of the Department of Agriculture. Currently, the definition of a farmers' market is contained in the statutes dealing with the Liquor Commission because farmers' markets are allowed to sell wine from local vineyards. This bill simply replicates the statutes found in the Liquor Commission's statutes and places them in the agriculture statutes. Further, it is important that we have a definition because certain federal programs, such as the WIC

vouchers, can be redeemed at farmers' markets. The Public and Municipal Affairs Committee unanimously recommends this bill ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 118, relative to bicycle helmet use by certain minors. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 4-2. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move that House Bill 118 ought to pass. House Bill 118 requires bicycle helmet use by children 16 years of age or less when riding on public ways. The committee heard compelling testimony that millions of taxpayers' dollars are spent each year on treating head injuries. The committee also heard testimony that this bill will help primarily with the 12-16 year old age group. This group has the highest risk of bicycle related traumatic brain injury, yet have the lowest rate of helmet use. This bill will also erase the stigma of being the only child required to wear the helmet. If the legislature can save just one life with this bill, it will be worth it. Please join the Senate Transportation Committee in voting ought to pass and I thank you. May I have a point of order, Mr. President?

SENATOR EATON (In the Chair): Senator Martel.

SENATOR MARTEL: I do want to speak on this bill, but is it proper for me to speak on it now or would you like me to speak on it after?

SENATOR EATON (In the Chair): Keep...go right ahead...keep...oh, excuse me, I'm sorry Senator Martel, the bill's now on second reading, please.

SENATOR MARTEL: Thank you very much, Mr. President. This bill seeks to minimize, as I said, the number of brain injuries suffered by young bicyclists. It does so merely by adding the section already existing in the bicycle rules of the road in RSA 265:144. RSA 265:144 goes back to 1973. If one has a problem with House Bill 118, then presumably one advocates to repeal of all the other bicycle rules of the road which have been in place for over thirty years. Support for this bill comes from over 15 health and safety organizations, including the New Hampshire Police Chiefs and AAA. What's the need for this bill? The Department of Health and Human Services says that, in 1999 and 2000, there were 335 New Hampshire citizens under 10 who were hospitalized for brain injury suffered while riding a bicycle. Most of them were not wearing helmets. NHTSA says that bike helmets are 85-88 percent effective in mitigating brain injuries. A report done by the Consumer Product Safety Commission at Stanford said that state laws requiring bike helmets help use to increase bike helmet use. Having suffered a major brain injury back in 1987, Mr. President, I have a very close connection to this type of legislation. I could keep going on and on, but I would rather keep it for questions, if some people have questions on this bill, with other speakers after me. I can assure you that this is not just frivolous legislation. There will be an amendment, I believe, that is going to be proposed and I will speak then, and ask questions on that amendment when it comes up. I urge that, because of the fact that we have such problems with the roads today because of the high amount of traffic, in that bicycle helmets do protect people and do stop massive head injuries from happening. That we should, and I urge you to please pass this bill. It is

the right thing to do to protect the children and it will be the right thing to do to help with the health care cost in the state. Some people will argue that we're infringing upon the privacy of our families and children. Well, I see it differently. I see it as not infringing on their privacy even though I was asked the question once, if this is going to continue to the age of 18, 20, 21. I don't believe that that's going to happen. I believe that we see it now up to the age of 16 and this will be the added effect, okay, of protecting children from that age down. Most people who had massive head injuries don't make it back. I really feel bad for those people who don't make it back, and I hate to see more children not make it back from the head injuries, to be able to stand up and speak. Stand up and do something and work or even help try to assist in daily lives. Please follow me in this lead to help pass this legislation so we can protect these children in the future. I thank you, Mr. President.

Senator Letourneau offered a floor amendment.

Sen. Letourneau, Dist. 19

May 19, 2005

2005-1501s

06/10

Floor Amendment to HB 118

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Riding on Bicycles; Helmet Required. Amend RSA 265:144 by inserting after paragraph IX the following new paragraph:

X. A town, by vote of a majority of those present and voting at any regular town meeting, acting under an article duly incorporated in the warrant for the meeting, or a city, by vote of its governing body, may require that no person less than 16 years of age may operate or ride upon a bicycle on a public way within the municipality unless he or she wears protective headgear that is certified as meeting the standards established by the United States Consumer Product Safety Commission.

2 Penalty; Failure to Use a Bicycle Helmet. Amend RSA 265:153 to read as follows:

265:153 Penalty.

I. Any person violating the provisions of this subdivision or of any ordinance, bylaw or rule made under the provisions of this subdivision shall be guilty of a violation.

II. *The maximum fine for a violation of RSA 265:144, X shall be \$35 for each occurrence.*

3 Effective Date. This act shall take effect January 1, 2006.

2005-1501s

AMENDED ANALYSIS

This bill permits municipalities to require bicycle helmet use by persons 16 years of age or less when riding on public ways.

SENATOR LETOURNEAU: Thank you, Mr. President. I would like to offer an amendment and don't have it in front of me. I am sure that you have it down there. If I may speak to my amendment. Thank you, Mr. President. Let's put this issue where it belongs - with the local communities. Parents could decide for themselves, make the choice to say if they want this to be law in their community. Let's give them local control. We always talk about local control here. House Bill 118 is not about kids; it is not about helmets. It has everything to do with parental rights and responsibilities and the state's intrusion into their personal business. Are

we going to become a nanny state, where we are told how to dress, tie your shoes, what to have for breakfast, what personal habits you may have or what personal hobbies you may have? Let people have a say on this issue that are directly related to them and their families. The state has no compelling interest here. As individuals, we are responsible for and have a vested interest in our own safety, and especially the safety of our children. So it should go without saying, I support and encourage the use of protective sports equipment, including helmets for young children. Would you allow a child to play football without a helmet? I doubt it. Do we have a state law that mandates it? None that I could find. The larger question here is, should big brother mandate personal safety? For children to wear inexpensive headgear is a non-brainer and a common sense issue. We cannot legislate common sense. We all support children protecting themselves. We should, as parents, be able to tell our kids, "I catch you riding a bicycle without that **TAPE CHANGE** bike away from you." I know it works in my family. Make it a law and the kids are going to resent it and they will probably...you will probably see helmet use go down. Remember your childhood. Remember the resentment you had for the rules? Especially the rules of schools? Each of us should ask ourselves this question. Is this bill concerned about kids and industry...kids and injuries? Then why is skateboarding, roller skating, ice skating, sledding, skiing, or other types of risky behavior excluded from this bill? While this bill is flawed to exclude those people and those issues, it still leaves many unanswered questions. For example, if your child is hit by an automobile, not wearing a helmet, and it is a state law, would the auto insurance curtail or even deny benefits because of contributory negligence? Think about it. It could happen. We have seen it happen in other states where there is a mandatory seat belt law and people weren't wearing seatbelts. Hit by another car, and because they weren't wearing that seatbelt, they had contributory negligence. This could happen to a single mother of three. Where would she get the money to pay for those hospital bills? What if the accident occurred on a sidewalk where a child was injured falling down while riding without a helmet? Would your health insurance cover the cost? With the high cost of insurance and health care, insurance companies are doing all they can to keep costs down. You can bet your bottom dollar they'll investigate these particular cases and do what they can to deny benefits. Lawyers and courts will definitely be involved. How will this bill be enforced? Are we to tell the police they must now stop and chase down kids that are now not wearing helmets? There is no procedure in this bill for enforcement. Will the police make the rules up as they go along? There is no record keeping enforcement clauses, rendering it useless. This bill is feel good at its best. We should put this back in the local communities where they can enforce it at a local level and make the decision whether or not they want to spend police officers' time chasing kids around. Let's let the local folks choose for themselves if this is what they want, and thank you very much.

SENATOR GATSAS: Thank you, Mr. President. Senator Letourneau, wouldn't you agree if this bill saves one child's life, that we should be doing it?

SENATOR LETOURNEAU: Senator Gatsas, if we pass my amendment, it will do the same thing. It will allow people to vote on it in their local communities. Here they haven't got a vote other than what we say here goes. So to answer your question, they can make that same decision locally, and yes, it is worth it.

SENATOR GATSAS: It is worth saving a child's life?

SENATOR LETOURNEAU: Course it is.

SENATOR GATSAS: Thank you.

SENATOR JOHNSON: Senator Letourneau, if I believe that education goes a long way in addressing these issues as it did on the seatbelts, which we have a big percentage of people now who are wearing seatbelts, and also parental choice would be the factor that would make that decision, would I vote the amendment down and also vote against the bill?

SENATOR LETOURNEAU: I'm sorry. I didn't understand your question. Would you repeat it for me please?

SENATOR JOHNSON: If I felt that education, as it did on seatbelts, would go a long way to solving this problem, and also parental choice would be the choice of not wearing the helmet or wearing the helmet, would I vote this amendment down and also vote against the bill?

SENATOR LETOURNEAU: Senator Johnson, I think what you'd want to do is vote for the amendment to allow the local communities to make that choice for themselves. In regards to safety belts in cars, we mandated that up to age 18 and that went through the Transportation Committee when I was a member in the House, and we do that as a state because we control what happens in motor vehicles. This is a bicycle. This is a toy. Thank you.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. May I just briefly speak about the amendment? This amendment is foolish. Please vote it down. It would be ridiculous for a kid to ride a bicycle in my town of Antrim where the ball field is in Bennington and one town passes it and the next one doesn't. And if my...the child was peddling maybe to Concord, they would have to stop at every town line and say "do I put my helmet on now or take it off now?" So I think the amendment is just foolishness. I want you to know it was presented in Transportation. It was defeated 4-2 and it should be defeated today. If I may speak to the bill? Some of you have already heard this because you heard it in committee and I am sorry. It is longer than I usually take to speak on the floor, but I think this is very important. Earlier today I have heard different Senators speak because of personal situations. One speaking about having a child who is handicapped. Another one speaking about a child who had to take medicine who didn't want to. So we are all here with personal feelings. So I want you to know where I am coming from. I spent 35 years as a claims man. My wife works at Crotched Mountain Foundation. At Crotched Mountain Foundation, they have a head injury unit. My daughter works at Robin Hill Farm in Deering which is for adult head injuries. In order to understand what my family did, I talked our Lions Club into going into Crotched Mountain one Sunday a month to help these head injured children play bingo. I learned a great deal. So that's where I'm coming from. I think you ought to know a little about costs. What happens with a head injury? If there is insurance, this head injured child goes to a hospital, they keep them as long as they can, then they transfer them to a for profit rehab center. They keep them until guess when? The insurance is gone. Then where do they go? A non-profit rehab center. That's why Crotched Mountain is on top of the mountain. It is a nonprofit rehab center. And guess who is paying that bill ladies and gentlemen? We are. We're paying that bill. Once a million dollars probably has gone already in medical bills...so that's the cost of it. I think this young lady in Henniker could say it better than I do. I

read this letter in Transportation and I am going to read it today. It is kind of a cute little letter. It says, "Dear Mr. Flanders, I totally agree with your bill to try to make everybody wear a helmet on roller blades, bikes, skateboards and so on. Some people disagree about wearing helmets, but that's just dumb. You know, someday these people who don't wear helmets are going to crack their heads open. If your bill is defeated and someone cracks their head open without a helmet doing these things, they'll be sorry they defeated your bill. If you know you're a good rider, people say, "Oh, you don't need a helmet", and I am sure they are wrong because you don't know about the other drivers. Anyway, good luck. P.S. Just so you know, I went to the State House the other day for a field trip and I saw you on my way out. I didn't have a chance to shake your hand, but I was the little girl in the front row. I was the smallest girl and I was wearing glasses and brown hair. P.S.S. My dad said that you know my grampy Ed Rogers. He said that you guys used to work together at New Hampshire Insurance. If you have time, please write me back." This young lady knows what she is talking about. May I close by saying I have only been here five years and I have made a lot of votes and I have made a lot of very important votes. You, Senator D'Allesandro and you, Senator Johnson, made a lot more votes than I have. If my vote today will stop a head injury to a young boy, a young girl, that mom and dad, that parent, those grandparents, that family, those friends, the agony of a head injury. If my vote will do that, it will be the most important vote I passed in this Senate. I will close by saying this young man that we are sending over there today, that we gave the shirt to who's got cancer, if there was a bill here today, and there was one chance that one little boy wouldn't get cancer in the future, you'd vote on it 24-0, and you have that opportunity today with a head injury. Please vote yes. Thank you very much.

SENATOR D'ALLESANDRO: Thank you, Mr. President. It is very difficult to follow the superb articulations of Senator Flanders. Anyone who has visited Crotched Mountain knows what Senator Flanders is talking about. I used to visit Crotched Mountain quite a bit because they were in close proximity to my job. Let me just say this. My esteemed colleague Senator Letourneau talked about feel good legislation. We all ought to feel good about legislation and when we do something positive like this, we can feel real good that we are here representing the public and we are doing something positive to make someone's life a little bit better. I am very blessed with seven grandchildren. They wear their helmets when they are riding their bikes. We make sure that they wear their helmets when they are riding their bikes because we know it is safe and we know it is the responsible thing to do. Not every person has that or feels that same responsibility. I say this to you. Thirty years ago, I stood on the floor of the House and I said, it's the state's responsibility to provide a lunch at every school in the state because it is something that I believe is essential and important. We were the third state in the United States to pass that legislation. There were those that said, "No, it should not be that way. Someone else should decide." I said, "That's the wrong attitude." I analogize that to this situation. If we, as a body, know that there is a better way to do it, and that that can do what Senator Gatsas has pointed out, "save one life", haven't we done something to make us all feel good about why we are here? That's why we're here. The bill as presented is a good bill. We don't need to amend the bill. We need to pass the bill and move forward. Thank you, Mr. President.

SENATOR GOTTESMAN: Thank you, Mr. President. I sat in committee with Senator Flanders and, much to my amazement, learned a lot about him through much of what he said today and what he said in the committee. I found that we have a common interest even though we come at it from a completely different direction. He's usually the one analyzing the cases and I am usually the one bringing the cases. But we both know together in our hearts how serious these injuries can be. No one has really talked about the actual number. What it costs the state of New Hampshire. The numbers that we saw were that an average injury of this type costs the state of New Hampshire \$4.5 million. That is an incredible amount of money that we can chip away at by passing this legislation. Let's not forget that children ride their bikes on the road. There is no speed limit for these children to speak of and we have all seen them riding very powerful, very high performance bikes, powered by their own legs. So, there is no limit on what they can do. So we are talking about bikes that can go 25, 30, 40 miles an hour. When they go down, they go down hard. Many of you know one of the lobbyists here in the State House who had a terrible bike injury years ago and she is here and she has recovered. But she is one of those people who has been behind this from day one. I have handled cases for people who have been terribly injured. I have seen people who have been terribly injured. I have participated in an organization that has provided thousands of bike helmets to children for nominal or no cost. We don't want those bike helmets to be sitting on the shelf not doing their job. Please pass this bill and defeat the amendment. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise in support of the bill and against the amendment. I can't possibly match what has already been said by the previous speaker supporting the bill, but I do want to add my voice to the chorus. Many of us know people who have suffered head injuries. Many of us know the devastation that the families and the individuals suffer. But I want to remind this body that we have taken the position, again and again, that prevention is a good thing, and that reducing burdens on businesses and the state is a good thing, and this bill does exactly that. For every head injury we prevent with this bill, we are reducing burdens on taxpayers, on small businesses and on everybody who participates in the costs of the care of people with brain injuries. So I would ask that you vote against the amendment and for the bill. Thank you.

SENATOR MORSE: Thank you, Mr. President. I find it difficult to rise at this point. Senator Flanders, I have sat next to him for three years in Transportation and he was probably about as passionate as he could be when he spoke in committee about this. He almost changed my mind, but I have been out for six years before this, and used this particular piece of legislation as a piece of legislation that I go and talk to school age kids about. And when I do it, I go in like I was a rep because that is when I started it, and I give them a badge that tells them what town they are from so they know that there are 400 people in the House and they are from every town. Then we start to talk about the bill, and every year I bring up the brain injury side of it. Every year I bring up that policemen and firemen will come and testify. And every year we go through the discussion about parents, and thank God when my daughter came in here and Senator Estabrook asked a question, "Do you wear a helmet", she answered "Yes." "If you should wear a helmet" and she said "yes", and she does. Then you are going to say, "Well I am a good

parent and I do my job." Well, like every one of you, I take it a step further. I work very hard with the Boys and Girls Clubs to substitute for what parents can't do. But the fact is, every time that I have taken a vote, whether it's been in this body with the kids or back home with the kids, it comes down to their parents should be telling them what to do. I firmly believe that today. I've thought about my vote on the amendment. I think it was frivolous. It was in frustration. You can't have separate votes throughout this state. I mean, separate towns having helmets, not having helmets. It is almost like when they line up on 93 with motorcycle helmets at the border. It is a difficult thing to understand. But the fact is, I will vote against the amendment, but I am going to vote against the bill. I am voting against the bill and telling you as a body, because I believe as passionately as you believe there should be a bill, that parents need to have responsibilities. Thank you.

SENATOR BARNES: I was going to ask to move the question, but I guess I will hold back. There's probably some more people that wish to talk about it.

SENATOR KENNEY: Thank you, Mr. President. I am a co-sponsor of House Bill 118. I would ask you to defeat the floor amendment. First all, Mr. President, I would like to dedicate my floor remarks to Sarah McKinney and for this body to know that Sarah McKinney was a nine year old girl who lived in Union Village. A fanciful girl, growing up like any other young girl in our area. But on one unfateful day, May 27, 1996, she was struck by a truck. Sarah was riding her bicycle at the intersection of Maple and Main Street when she was hit by a Ford pickup truck driven by a young male. Witnesses said the girl was on her way across the street to meet friends. She came out into the street and into the path of the truck. Lilac bushes may have obscured the driver's visibility and contributed to the accident. Wakefield Police said that neither speed nor alcohol is suspected. No charges have been filed against the driver. Sarah was taken to the Wentworth Douglas Hospital in Dover and then airlifted to the Boston city hospital, where later that evening she passed on. Now I mention Sarah because, in that accident report, on that bicycle that day, she was not wearing a bicycle helmet. In 1996, statistics from the state, the safety statistics, three young people were killed and one of them was Sarah. Now the Chief of Police said that had such a profound affect on him, that death of that young child, that any time he has since ridden a bike, he has always worn a helmet. And for the longest time, the Village of Union, all the kids were wearing helmets after that accident. Two or three years later after the accident, the kids forgot the lesson. The Chief would say that "Anytime I'm on a bike, I see myself as a role model today and I wear my bike helmet." And the community, for a couple of years, ran a bike race and we went ahead and collected money in the honor of Sarah McKinney, and we put that money towards bike helmets in the community. But that bike race no longer exists. But it brings to mind that, if we had passed legislation in 1995 requiring bike helmets for 16 years and under, the Chief indicated that type of injury that Sarah received that day, if she would have worn a bike helmet, would have saved her life. Unquestionably. That had a profound affect on me. I also represent the Lake View Rehabilitation Center in Effingham, New Hampshire - the largest brain injury facility in the state. One of my dear friends from grammar school, Curtis Hayes, who on a motorcycle, was not wearing a helmet, received tremendous brain injury. But we are not talking about motorcycle helmets today. I had another

friend Brian Baxter recently, who works...is a correctional officer for the state, receive a very serious injury on a motorcycle that almost killed him. But my point is that we have to protect ourselves, but as adults, we say "Live Free or Die." We say that that's your responsibility. But when it comes to our kids, you better darn toot that we better protect them as much as we can. The way that we can do that is to support this bill. We support our kids in other ways. We support them by drinking laws, licensing, cigarette access. We do a tremendous amount of things for our kids. More recently, we passed the law in regard to young kids when it comes to the booster seats in the cars. We upped that age. I have always been proud of my state because, when they look at the development years of our young kids, we protect them as much as we can. I would also like to just reveal some basic facts from the brain injury facility that provided it to me today. "Bikes, accidents, crash land more children in the hospital emergency rooms than any other sport." I wasn't aware of that. "In fact, kids ages five to fourteen get hurt more often than bikers of any age." I wasn't aware of that. "Every day about 1,000 kids end up in emergency rooms with injuries from bikes. Riders with helmets have an 88 percent reduction of risk of brain injury." Obviously if they are wearing a helmet. "One in eight cyclists injured has a brain injury." One out of eight. That's significant. "Ninety percent of the bicyclists killed in 2000 reportedly weren't wearing a helmet. In the national survey of children ages eight to twelve, nearly half, 49 percent, reported that they would wear a helmet if the state or community required it. The estimated cost of bicycle related injuries and deaths of all ages, is \$8 billion." The life time costs, as Senator Gottesman brought out, is \$4.5 million. If you can afford that bike, you can afford a helmet. There is no doubt about it because bicycles today can cost between \$200 and \$300 just to get a low-end bicycle. If you can afford the bike, you can afford a helmet. I would also lastly say that look at our public right-of-ways. I grew up in Wakefield when there was 800 people there. Today there are 5,000. We are in a lakes community where the summer population increases up to 15,000. There are no breakdown lanes on these secondary state highways. They are right up against the stonewalls, right up against the sand. There is no way for you not to be in the middle of the road when you are driving your bicycle. There is more congestion. The breakdown lanes aren't there and there is more erratic behavior on our roads, more than ever, in the history of New Hampshire. Lastly, Sarah McKinney, much like my sister, who didn't make it through her senior year of high school, because of an untimely death, Sarah McKinney, next month, would have graduated high school, from Farmington High School. That to me, says to me that by me supporting this bill, being passionate and very vocal about it, that Sarah McKinney's life had a purpose. The purpose is today. The purpose is to pass this bill. I encourage my colleagues to defeat the amendment, pass this name, and when I ever think or see a kid with a bike helmet, on a bike, I will think of Sarah McKinney and what this state has done today by passing this bill. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. Judging from the eloquent testimony from my friends here in the room, I would like to remove my amendment, withdraw it. I ask for a roll call.

Without objection Senator Letourneau withdrew his floor amendment.

SENATOR LARSEN: I don't have long statements of personal nature, but I think we can return our thoughts to the bill itself and the facts around it. Bikes are treated as vehicles on the road. This bill will help the 12-16 year olds age group who have the lowest rate of helmet use. Forty percents of accidents are involved in a collision with a car. The helmet use reduces risk of brain injury by 85 percent. There are free and discounted programs for bike helmets. And 79 percent of respondents in New Hampshire of a UNH poll said they support the use of bike helmets, the requirement that bike helmets be used in New Hampshire. It makes sense to pass this bill. I think the votes are there. I urge you to join in passing this bill unamended.

The question is on the motion of ought to pass.

A roll call was requested by Senator Letourneau.

Seconded by Senator Barnes.

The following Senators voted Yes: Kenney, Burling, Green, Flanders, Odell, Roberge, Gottesman, Foster, Larsen, Gatsas, Barnes, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Boyce, Eaton, Bragdon, Clegg, Letourneau, Morse.

Yeas: 16 - Nays: 8

Adopted.

Ordered to third reading.

HB 125, relative to ignition interlock devices. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Flanders for the committee.

Transportation and Interstate Cooperation

May 11, 2005

2005-1397s

03/10

Amendment to HB 125

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraphs; Alcohol Ignition Interlock Program; Driving After Revocation or Suspension; Vehicle Type Exemption. Amend RSA 265:93-a by inserting after paragraph I the following new paragraphs:

I-a. Any person who is convicted of driving while under suspension or revocation resulting from a DWI offense shall be required by the court to install an ignition interlock device in any vehicle registered to that person or used by that person on a regular basis, for the remaining period of suspension or revocation plus an additional period not less than 6 months nor more than 2 years. The court may order such installation on a temporary basis prior to conviction as a condition of bail.

I-b. To the extent that technology does not exist to permit the installation or safe operation of any particular vehicle type when equipped with an interlock, the court may order that a restraining device which disables the vehicle be placed on any such vehicle registered to or used on a regular basis by a person required to install an ignition interlock device.

2 Alcohol Ignition Interlock Program; Recalibration. Amend RSA 265:93-a, VI(a) to read as follows:

(a) Provide recalibration of each device [monthly] ***within 30 days of installation and every 60 days thereafter***, unless otherwise ordered by the court;

3 Alcohol Ignition Interlock Circumvention. Amend RSA 265:93-b, I to read as follows:

I. Any person required by the court to [~~drive only a motor vehicle equipped with~~] **install** an ignition interlock device shall not drive any motor vehicle not equipped with this device.

4 Effective Date.

I. Sections 1 and 3 of this act shall take effect July 1, 2006.

II. The remainder of this act shall take effect July 1, 2005.

2005-1397s

AMENDED ANALYSIS

This bill:

I. Requires an ignition interlock device on any vehicle registered to or regularly used by a person who drives after a suspension or revocation resulting from a DWI offense.

II. Enables a court to require the disabling of vehicles that cannot be safely operated with an ignition interlock device.

III. Modifies the recalibration requirements for alcohol ignition interlock devices.

IV. Prohibits persons required to install an ignition interlock device from driving a motor vehicle not equipped with this device.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. If you recall, some years ago we passed this legislation, and at this stage of the game, it is now ready to be looked at to be given out to the vendor. In order to go the next step forward, they need this legislation which basically, to recap the prior legislation that, if someone is found guilty of DWI, and the judge can require that the person use this interlock in order to go back and forth to work. We all thought that was a good idea and we passed it. What we have done here is that they needed to know how often this device had to be checked. It can be tampered with, I guess, and it is new. So what we have done in this bill is basically said that the thing will be installed, and within 30 days it will be checked to make sure it is working properly and it will be checked every 30 days thereafter. So the main purpose of this is to know when to bring out the contract, of when it will be checked. I am told from talking to...after the hearing was, that whoever gets this will have stations throughout the state. There will be places up north, there will be places all over the state where, if you have one of these, you drive in and it is checked. We had a little bit of an argument. I will explain it very briefly if I may, about what we do with someone who has a vehicle that the interlock doesn't fit on. An amendment was put in if you look under the amendment under line 11. That what we've said that if the court decides, they may, and I emphasize the word "may", put a restraining device on any vehicle that it doesn't fit on that is registered. This was my idea so I am not going to blame it on anybody else, it was my idea. I thought that, if someone is a real problem, has got a real history of DWI, and a judge feels that this person can't be trusted with some sort of vehicle in the yard that is registered, that the court can order that a restrainer be put on that. I don't see it as a problem; some do. I am sure it will be discussed a great deal in Committee of Conference, but I just wanted to point that out that, if the interlock device doesn't fit on it, then a lock can be put on. We ask your support so that we can get ahead of this. I think it has been four or five years that this has been legislation and now they are ready to issue the contract. Thank you.

SENATOR BURLING: Senator Flanders. Thank you. Just to make sure I understood, the recalibration decision that we made in committee was thirty days after installation and then every sixty days thereafter. Is that not correct?

SENATOR FLANDERS: That is correct.

SENATOR BURLING: Thank you.

SENATOR FLANDERS: We did talk about thirty days, thirty days and then sixty. It was agreed. The person has to pay for this and we thought that, if we could keep the costs as low as possible, and keep it honest, it would be thirty days, and then sixty after that.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 244-FN, relative to statutory liens by the department of safety. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. I move House Bill 244-FN ought to pass. This bill basically authorizes the Department of Safety to impose liens for nonpayment of fees and charges under the federal tax agreement and the international registration plan. House Bill 244-FN also authorizes administrative review of fees and charges and under the federal tax agreement or the international registration plan. Basically this legislation will make sure that the liens are placed on the registrations and the titles and this will allow the Department of Safety to receive their debts. Thank you.

Adopted.

Ordered to third reading.

HB 260-FN, relative to motor vehicle equipment and registration. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

May 11, 2005

2005-1399s

03/09

Amendment to HB 260-FN

Amend the bill by deleting section 7 and renumbering the original sections 8-11 to read as 7-10, respectively.

Amend the bill by replacing section 9 with the following:

9 New Paragraph; Weight on Interstate and Defense Highway System; Additional Weight. Amend RSA 266:18 by inserting after paragraph II the following new paragraph:

III. Notwithstanding paragraphs I and II, for as long as exemptions exist in 23 U.S.C. section 127 that allow maximum gross weights of up to 99,000 pounds on interstate routes 89, 93, and 95 of the interstate and defense highway system, the provisions of RSA 266:18-a regarding weight on the non-interstate and general highway system shall also apply to vehicles or combination vehicles while being operated on any sections of interstate routes 89, 93, or 95 not posted by the commissioner of transportation for lower weights. Such vehicles shall not ex-

ceed the weight limits in paragraphs I and II unless they have been certified pursuant to RSA 266:18-d for the higher weights and paid the required fee the same as vehicles operating on the non-interstate highways as provided in RSA 266:18-d.

2005-1399s

AMENDED ANALYSIS

This bill:

I. Changes the name of the financial responsibility administrator to the financial responsibility supervisor.

II. Permits certain nonprofit corporations to purchase motor fuel from the motor fuel inventory and to receive road toll refunds.

III. Prohibits counterfeiting or duplication of number plates.

IV. Requires inspections for vehicles with dealer plates.

V. Permits white identification lights on certain vehicles.

VI. Authorizes additional vehicle weights on certain highways consistent with federal law.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 260-FN ought to pass as amended. House Bill 260 addresses various housekeeping measures for the Department of Safety. House Bill 260 changes the name of the Financial Responsibility Administrator to the Financial Responsibility Supervisor. It prevents certain nonprofit corporations to purchase motor fuel from the motor fuel inventory and to receive road toll refunds, prohibits counterfeiting and duplication of number plates, requires inspections for vehicles with dealer plates, permits white identification lights on certain vehicles and authorizes additional vehicle lights on certain highways consistent with federal law. The committee amendment deals with the overweights in section six of the bill and simply clarifies that language. Please join the Transportation Committee's unanimous vote of ought to pass as amended. Thank you.

SENATOR BOYCE: My question deals with the part of this bill that requires that a vehicle with a dealer plate display a current inspection sticker. I know the current situation is that, if a dealer has a whole fleet of brand new cars, the Subaru dealer down in South Concord has 50-100 cars sitting on his lot, they're all brand new. None of them have a safety inspection sticker on it. I want to go in and drive one. He gets a dealer plate and today we take the car off the lot and drive the car. If this passes, it appears to me that he has to inspect every car and put a sticker on it before it goes on his lot because otherwise, the customer can't drive the car that they want to look at. They would have to go through the inspection process before the sale. Currently, the way that the inspection process goes, as I understand it, it has to have the number that corresponds with the birth date of the person who buys it. That is one of the reasons why currently these inspection stickers are not put on before the sale. So, it appears to me and maybe I am wrong, but does this not require that every brand new car, as it is sitting on the lot, has to have an inspection sticker on it, so that it can be driven by a potential buyer? And isn't that going to add a considerable expense to every new car dealer in the state? They are going to have to inspect the vehicle twice. They are going to have to put a sticker on it twice. They are going to have to put a sticker on it as it sits there on the lot before it is sold and then, when it is sold, they will have to put one on that corresponds with the new owners birth date. I think this is not well thought out. Did you have discussions about that in the hearing?

SENATOR LETOURNEAU: Yes, we did. My explanation to that is that all motor vehicles driven on the ways of this state are supposed to have an inspection sticker on it. How's the police officer supposed to know whether that car has been inspected or not? Now this is supported by both the Department of Safety and the New Hampshire Auto Dealers Association. We all are aware that the dealers also give cars to their sales persons and other people to drive on the road. They need to have this inspection sticker on them. They use them like a daily automobile back and forth to work every day. So that is the thought process that went into that. That was discussed in the House Transportation Committee and I thought that was pretty well ironed out. I apologize that I didn't have a great answer for you when you asked me earlier, but my mind was somewhere else.

SENATOR BOYCE: Thank you. Mr. President, I would like to divide the question and divide out section eight of the bill. Vote on it separately. That is the section that deals with the inspection stickers for vehicles with dealer plates.

SENATOR EATON (In the Chair): Just for reference, as amended, section eight actually turned into section seven.

SENATOR BOYCE: I would go with the section that is eight in the original bill is the section that I would like to divide out.

SENATOR EATON (In the Chair): So it is section seven in the amended version.

SENATOR BOYCE: Thank you. I'm assuming that this will be on the final passage and not the amendment. We don't have to divide the question on the amendment.

SENATOR EATON (In the Chair): That is correct.

SENATOR LETOURNEAU: Thank you, Mr. President. While I respect the opinion of my colleague, I would request that everybody please leave the bill as it has been presented to you. The purpose of having the inspection stickers on there is, as I said earlier, that all the vehicles on our highways are required to be inspected. A police officer doesn't know whether that vehicle has been inspected or not if there is no inspection sticker on it. This part of the bill is supported by both the Auto Dealers Association and the New Hampshire Highway Safety Agency.

SENATOR MARTEL: Clarification, Mr. President. Through looking at the amended version of the bill, are we talking about section eight on the amended version or are we talking about section seven of the amendment?

SENATOR EATON (In the Chair): What we are looking to do would be to...we are first going to vote on the amendment. Now the bill will be ought to pass as amended. We will vote on sections one through...we will vote on section seven first, as to having it removed, and however the bill is left, you will vote on the full bill then.

SENATOR MARTEL: Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. Looking in the calendar, this bill has a committee amendment. If we look at the committee amendment which is printed on page seven, it begins by saying "Amend the bill by deleting section seven." That is license expiration. Alright, so paragraph...I just want to make sure that we're numbering the paragraphs the right way when we vote. That's my point. Thank you.

SENATOR EATON (In the Chair): It will not be divided until after the amendment is adopted because that changes the numbers.

SENATOR LETOURNEAU: Right. The numbers change with our amendment. They all moved up. Thank you.

Amendment adopted.

Senator Boyce moved to divide the question.

The chair declared the question devisable.

The question is on removing section seven of the bill.

Motion failed.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 286, prohibiting the operation of pocket bikes and motorized scooters upon ways. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 6-0. Senator Morse for the committee.

Transportation and Interstate Cooperation

May 11, 2005

2005-1398s

03/10

Amendment to HB 286

Amend the title of the bill by replacing it with the following:

AN ACT prohibiting the operation of pocket bikes upon ways.

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Motor Vehicles; Words and Phrases Defined; Pocket Bike. Amend RSA 259 by inserting after section 77 the following new section:

259:77-a Pocket Bike. "Pocket bike" shall mean any 2- or 3-wheeled motorized device that has handlebars, is designed to be sat upon by the operator, is smaller in size than a conventional moped, motorcycle, or motor-driven cycle, and is powered by a gasoline or alcohol fueled motor with a piston displacement of less than 100 cubic centimeters. "Pocket bike" includes, but is not limited to, motorized devices commonly known as "mini-cycles," "mini-choppers," and "pocket rockets," but does not include a moped as defined in RSA 259:57, a motorcycle as defined in RSA 259:63, a motor-driven cycle as defined in RSA 259:65, a neighborhood electric vehicle as defined in RSA 259:66-b, or an electric personal assistive mobility device as defined in RSA 269:1.

2 New Section; Number Plates; Registration of Other Motorized Devices. Amend RSA 261 by inserting after section 81 the following new section:

261:81-a Registration of Other Motorized Devices. If other than a motorcycle, motor-driven cycle, or moped, any person seeking to register a motorized 2- or 3-wheeled vehicle or device shall provide proof of manufacture to meet United States Department of Transportation motor vehicle safety standards to the satisfaction of the director.

3 New Subdivision; Rules of the Road; Pocket Bike. Amend RSA 265 by inserting after section 123 the following new subdivision:

Rules of the Road; Pocket Bike

265:123-a Operation Prohibited. No person shall operate a pocket bike upon any way or allow a pocket bike owned by him or her to be operated upon any way. No pocket bike shall be issued a vehicle registration or certificate or title.

265:123-b Disclosure to Purchaser. Every seller of pocket bikes shall provide a written disclosure to buyers at the time of purchase that advises buyers that their existing insurance policies may not provide coverage for these devices and that they should contact their insurance agent or company to determine if coverage is provided. Such disclosure shall also advise buyers that the devices are not legal for operation upon public ways.

4 Effective Date. This act shall take effect January 1, 2006.

2005-1398s

AMENDED ANALYSIS

This bill prohibits the operation of pocket bikes upon ways.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 286 ought to pass as amended. HB 286 as passed by the House prohibits the operation of pocket bikes and motor scooters upon ways. However, the committee heard compelling testimony that stand up scooters should have the same privileges as bicycles. The committee amendment excludes scooters from the bill. The Transportation Committee asks your support for the unanimous recommendation of ought to pass as amended. Thank you and I would like to speak.

SENATOR MORSE: Mr. President, I am very proud that my daughter came up to speak on this, and I'm glad that it was noted that it was compelling testimony. She spoke in opposition and I would like to read what she had to say. "Emma Morse testified before the committee in opposition of the proposed legislation. She said her electric scooter only goes 12 miles per hour and her cousin rides his bicycle much faster and sits much lower to the ground. She continued to testify that she measured her height from the ground to the top of her helmet...to the top of her helmet...both on her scooter and on her bicycle. She said the height on her scooter is 64 inches and the height on her bike is 58 inches. She maintained that the stand up scooters should have the same privileges as bicycles. She noted that, if the town wants to put limitations on where scooters are allowed to go, they can already do so by law." Emma and I both ask you to support this bill. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 568, establishing the greater Derry-Salem cooperative alliance for regional transportation. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 568 ought to pass. House Bill 568 establishes the Greater Derry-Salem Cooperative Alliance for Regional Transportation to provide public transportation for three regional planning commissions, eleven municipalities in more than thirty Health and Human Services agencies in the Derry-Salem area. Public transportation provides access to both health care employment and basic light needs of many of New Hampshire's residents, especially to seniors and citizens with disabilities. House Bill 568 is enabling legislation that would allow the establishment of regional transit agency, the greater Derry-Salem Cooperative Alliance for

Regional Transportation (CART). It would also allow the program to qualify for federal money that is now available for projects of this nature. The Transportation and Interstate Committee ask you to join them in supporting this measure. Thank you.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 710-FN, relative to the 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury. Ways and Means Committee. Ought to pass, Vote 5-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 710 ought to pass. The bill clarifies the 5-year period in which municipalities reappraise real property to full and true value. While state law requires a reevaluation every 5 years, towns do conduct reviews more often than that, such as when ordered to do so by the Board of Land and Tax Appeals. House Bill 710 would simply make the next reevaluation scheduled five years from the last review. The bill also directs the Department of Revenue Administration to adjust the 2003 total valuation of the town of Roxbury in order to correct an inadvertent clerical error in which a multi-million dollar piece of property was mistakenly left off the property tax rolls. Big mistake. Big, big, mistake. Representative Pratt was really up in the clouds about this one. So the committee recommends ought to pass on House Bill 710. Thank you, Mr. President.

Adopted.

Ordered to third reading.

Senator Burling offered the following resolution:

SR 1, requesting the United States Congress to assure that compensation is provided to the certain United States pilots held as prisoners of war during the 1991 Gulf War. (Sen. Burling, Dist 5; Sen. Barnes, Dist 17; Sen. Boyce, Dist 4; Sen. Clegg, Dist 14; Sen. D'Allesandro, Dist 20; Sen. Estabrook, Dist 21; Sen. Flanders, Dist 7; Sen. Foster, Dist 13; Sen. Fuller Clark, Dist 24; Sen. Gallus, Dist 1; Sen. Gatsas, Dist 16; Sen. Gottesman, Dist 12; Sen. Green, Dist 6; Sen. Hassan, Dist 23; Sen. Kenney, Dist 3; Sen. Larsen, Dist 15; Sen. Letourneau, Dist 19; Sen. Martel, Dist 18; Sen. Morse, Dist 22; Sen. Roberge, Dist 9).

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move that Senate Resolution 1, a Resolution requesting the United States Congress to assure that compensation is provided to certain United States pilots held as prisoners of war during the 1991 Gulf War, be introduced and passed at this time. And, Mr. President, if I may, I'd speak just a moment to that. This is so important, particularly today when we have begun by honoring armed forces. I don't know if many of you remember the story; it broke in the press about three weeks ago. The story was of seventeen pilots taken prisoner by the Iraqis in the course of the first Gulf War. They were pilots who'd been shot down over Iraq and, to say that their experience was horrifying, is to understate by half. These seventeen were taken prisoner. They were universally tortured, terrorized, brutalized and their experience, just in surviving, was a triumph. They came back to this country after the war and they did something extraordinary, which proves once again that ours is a government of laws

and not of men. They went to court. They went to court and they claimed damages from the government of Iraq and they demanded compensation for the ill treatment they had received from the Iraqi armed services. They got just shy of \$1 billion in damages. That award, unfortunately, was then set aside by an appellate court. The consequences of their extraordinary heroism in performing their duty in Iraq, being taken prisoner, but surviving the terrorism and the torture, is laid out in a federal court decision, *Acree v. The Republic of Iraq*. If any of you wish to read it, I have it and I will be glad to give it to you. In any case, once their judgment, their award was set aside, it seemed to me important that we at least speak to the issue of perhaps having the federal Congress address the issue of compensation for these men and their families. And, suffice it to say, the seventeen who came back brought with them burdens which made their family lives terribly difficult as well. I simply hope that we can speak with one voice in adopting this resolution and then I am going to say that my good friend, Senator Barnes, had the best idea of all, which is, if we pass this, we would send it to the Senates of each of the states in which these men and their families now live as proof positive of our commitment to their service. So, Mr. President, I offer you Senate Resolution 1, A Resolution requesting the United States Congress to assure that compensation is provided to the certain United States pilots held as prisoners of war during the 1991 Gulf War.

SENATOR EATON (In the Chair): Thank you Senator Burling. I believe you had 24 Senators sign on that.

SENATOR BURLING: We do.

SENATOR EATON (In the Chair): Thank you.

The question is on the adoption of the resolution.

A roll call was requested by Senator Barnes.

Seconded by Senator Martel.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

SUSPENSION OF THE RULES

Senator D'Allesandro moved that the rules of the New Hampshire Senate be so far suspended as to permit the introduction after the filing deadline and Senate action after the crossover deadline on Senate Concurrent Resolution 5.

SENATOR D'ALLESANDRO: Thank you, Mr. President. This Concurrent Resolution has to do with an aquatic vascular plant and that is milfoil that is becoming really pervasive throughout our lakes and destroying our lakes. It just attests to that fact and looks for the Senate President to include an outside member as a member of an existing commission to look into milfoil and to make sure that the state of New Hampshire deals with this in the proper fashion. Thank you, Mr. President.

Adopted by the necessary 2/3 vote.

INTRODUCTION OF SENATE BILL(S)

Senator D'Allesandro offered the following Resolution:

RESOLVED that, in accordance with the list in the possession of the Senate Clerk, Senate legislation numbered from SCR 5, shall be by this resolution read a first and second time by the therein listed title(s) and referred to the therein designated committee(s).

Adopted.

First and Second Reading and Referral

05-1079

SCR 5, recognizing the increasing problem of exotic aquatic weeds and species. (Sen. D'Allesandro, Dist 20; Sen. Flanders, Dist 7; Sen. Odell, Dist 8; Sen. Burling, Dist 5; Sen. Fuller Clark, Dist 24; Sen. Johnson, Dist 2; Sen. Kenney, Dist 3; Sen. Estabrook, Dist 21; Sen. Green, Dist 6; Sen. Larsen, Dist 15; Sen. Gallus, Dist 1; Rep. Patten, Carr 4: Environment and Wildlife)

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 156-FN, relative to criminal trespass.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 156-FN, relative to criminal trespass.

Senator Foster moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 203, relative to leases and contracts for buildings or lands owned by the fish and game department.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 203, relative to leases and contracts for buildings or lands owned by the fish and game department.

Senator Clegg moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 224, relative to the committee on judicial conduct.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 224, relative to the committee on judicial conduct.

Senator Foster moved to concur.

Adopted.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 43, relative to state employees appearing before the legislature.

HB 118, relative to bicycle helmet use by certain minors.

HB 125, relative to ignition interlock devices.

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers.

HB 214, permitting the parents or legal guardian of a sexual assault victim to remain with the victim during the legal proceedings.

HB 244-FN, relative to statutory liens by the department of safety.

HB 260-FN, relative to motor vehicle equipment and registration.

HB 275, defining farmers' market.

HB 286, prohibiting the operation of pocket bikes and motorized scooters upon ways.

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire.

HB 315, relative to best available technology for air pollution control.

HB 329, establishing the crime victim employment leave act.

HB 346-L, relative to the procedure for withdrawal from a cooperative school district.

HB 362, relative to statutes to be posted at polling places.

HB 421, relative to effective dates.

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors.

HB 456-FN, relative to inhaling toxic vapors.

HB 472, relative to the definition of recreational program.

HB 568, establishing the greater Derry-Salem cooperative alliance for regional transportation.

HB 584, relative to evidence of admissions of liability in medical injury actions.

HB 623-FN, relative to licensing requirements in the insurance and financial services industries.

HB 687-FN, relative to free tuition at New Hampshire public institutions of higher education for children of veterans who die while on active duty or from a service-connected disability.

HB 710-FN, relative to the 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury.

ANNOUNCEMENTS

SENATOR GATSAS (RULE #44): Thank you, Mr. President. I am going to read you a letter here that I received on Monday. "Dear Mr. Buckley, Legislative Budget Assistant...

SENATOR EATON (In the Chair): Senator, is this a Rule #44?

SENATOR GATSAS: This is a Rule #44. Thank you, Mr. President. "Mr. Buckley, Legislative Budget Assistant, State House 102, North Main Street, Concord, New Hampshire. Dear Mike: The members of the Fiscal Committee share concerns about the possibility that the Office of the Legislative Budget Assistant, Budget Divisions, may be asked by individual members of the General Court to prepare a budget alternative to House Bill 1 or substantial amendments hereto. They are also concerned that the request of individual legislators to your office, extends significant time and resources developing spread sheets for school funding proposals. As you know, the Budget Division is authorized by RSA 1431:b-1,a, to provide technical staff assistance in areas of finance, accounting and budgeting to the Appropriations, Finance, Ways and Means, and Capital Budget Overview Committees, and such other committees including joint committees of the General Court as the Fiscal Committee may form from time to time to designate upon the request of such committees or Fiscal Committee. This statute clearly authorizes the Budget Division to provide assistance to a limited number of legislative committees. It does not authorize the Budget Division to prepare budgets, budget amendments, school funding or other spreadsheets at the request of individual members of the House or Senate. In light of these statutory limitations, I request that the activities of the Budget Division be limited to those specified in statute. If you have any questions, please do not hesitate to contact me. Sincerely, Tom Eaton, President of the Senate." I received that letter on Monday. I think every one of us come up here to represent 55,000 people. There are some members of this chamber that, if they had received this letter, the roof still wouldn't be on this building. I think you probably know who you are. I think it is inappropriate for any of us to have to work with our hands tied behind our back. We are all up here earning \$100 a year. We try and do the best work we can do. And there is no question that the Budget Committee is probably under stress. I don't think that anybody should take a front seat before they get their work and get it done. However, I don't think anybody should not have the appropriate tools to conduct the business of the people of the state of New Hampshire up here. I asked Mr. Buckley, if I did have an amendment to the budget, and I went to Legislative Services, and asked them to prepare that amendment, whether it would be to add \$1 to an item, if Legislative Services goes down to Mr. Buckley and asks him to prepare an amendment to help them out, his answer would be no, unless it was one of the seven of the people sitting on Finance. Seventeen people in this chamber are put at a disadvantage. I remember Senator Below sitting here when I was a freshman. He wasn't on Finance. He prepared a budget, I want to say with probably thirty different amendments. I looked at those and I said, he had his opportunity, they were prepared for him. He had the opportunity to have that vote up or down. This is not about Ted Gatsas. This is not about anybody else in this chamber. This is about what's right for the people of New Hampshire. When I can go to a Representative and ask him to go down to the Legislative Budget Office and have him do my work and have people ask me why

his name is on a spreadsheet, and I tell them it is because he has the patent on spreadsheets and he gets a nickel for every one, because I was embarrassed to say that I couldn't go down there and get the work done. I think that's wrong. I don't think that should happen. I think every one of us should have that opportunity. I don't think I am asking for anything anymore than any other individual in this chamber is entitled to. Four hundred members can go down to the Legislative Budget Office today, stand in line and ask for requests. You go down as a Senator and you get handed this letter. So Mr. President, I have said my piece. I ask you, as a Senator, as a fellow Senator, as we both represent the same amount of people, that you withdraw this letter so that we can go down and do our work as we see fit. I would ask you that as a colleague, as a friend, that we shouldn't be doing this in the Senate. Thank you, Mr. President. Could I have your answer please?

SENATOR EATON (In the Chair): Rule #44's do not have an answer to them. They are a statement by the Senator. If you want to talk about it later, we'll talk about it.

SENATOR GATSAS: Mr. President. I certainly don't want to challenge the Chair on it. But I think that my colleagues, with the silence that I can hear a pin drop in here, I am asking you before them.

SENATOR EATON (In the Chair): Are you asking for a vote on that?

SENATOR GATSAS: If that's what you'd like, I don't have a problem doing that. I am asking you, out of respect to your position as the Senate President, that you withdraw this.

SENATOR EATON (In the Chair): You asked for a vote, so you can have a vote.

SENATOR GATSAS: I'll let my other colleagues speak or we can have the vote now.

SENATOR EATON (In the Chair): Senator Flanders, are you taking a Rule #44?

SENATOR FLANDERS (RULE #44): I have a comment to make. May I make a comment?

SENATOR EATON (In the Chair): We are in the Rule #44, Announcements are Rule #44s in the late session.

SENATOR FLANDERS (RULE #44): I would like to see the two of you sit down and talk this out and come back to us at a different time. Sit down and let's work it out. Please try. Thank you.

SENATOR MORSE (RULE #44): I agree with Senator Flanders. I've asked for this ahead of time and neither body wanted to do that. The offer's on the table now and I think it should be worked out that way.

SENATOR EATON (In the Chair): Senator Green, do you have a Rule #44?

SENATOR GREEN (RULE #44): Thank you. I also received this letter. I went in and requested, and it wasn't even anything to do with the budget. I went in and requested some information on a fiscal analysis on a bill. I felt it was important if I was going to present a bill that had a fiscal impact on it, that I needed a fiscal analysis by someone that you would all believe was accurate. I can write a fiscal analysis, but I wanted it to be an independent analysis. So I went down to Legislative Budget Office and I said I would like you take this bill, do what you've got to do

to with it, so that you are comfortable that whatever the numbers are, are real, because I am going to present this as part of a bill that...an amendment that I'm proposing, and I was handed a letter. I was just horrified. What is this all about? Look, let me tell you what I am really concerned about here. It isn't this one action; it's a series of actions. What's going on around here with respect to individual Senators? That doesn't mean that we've all got to agree. This is not about agreement. This is about working together to do the state's business. If you put me in a position that I can't use public technical assistance and help, as an individual Senator, you're denying me the right to represent my constituents. That's what you're doing. Why are we doing this? This isn't a kid game. This isn't playing in the sand box. This is serious business. And at some point, enough of you are going to get upset if leadership continues down this road. We have other rules that we look at in our book and people tell us, "Well, you can't do this, and you can do that." I feel like we are a bunch of kids here being told what to do. I am going to daycare. By the way, I go to daycare. My wife works at daycare, and you got to tell them what to do. They are telling us kids what to do. What do you guys do, leave your brains at home when you come here and don't have anymore independence, no more free thought? No more ability to do what you're elected to do? What's that all about? I am just horrified with the attitude and the image that is being portrayed around here. Mr. President, it is up to you, as the President of this organization, to get us all working together. Now it may be a hard task because we don't all agree on everything, but we got to get away from personalities and get to the issues and stop this foolishness. Now I am going to speak to another incident and Senator Bragdon, excuse me please. It is not intended to be personal, and it is not intended to be personal to the President. But let me just say this. I've been here before and, as you know, and I respect the opinion of chairmen of committees. I really do. I think you have a job to do and you got to work it. It's hard. You are trying to get a job done. We have guidelines. We have deadlines. It's all part of what we do up here. But we have rules that are dealing with committees. Some are referred to in generalities in the rule book, some are not, and presidents...I mean, committee members and chairmen have certain kinds of prerogatives, I understand that. But for heaven sake, where is the consistency? I have never been on a committee where someone would tell me a subject matter that deals with the committee we are on, is non-germane to a bill that is before us that is being amended. I have never heard of such a thing. But I really know what was behind that. I know it was nothing to do with the germaness of the bill. Senator Gatsas tried to make an amendment on an education funding bill, in an education bill. Guess what it was dealing with? Adequacy in education. Now that is not the same as a funding bill, you understand, because funding bills are only about money. There is no policy questions there dealing with education. Now that, that's really reaching. That doesn't even pass the giggle test, I am sorry. It doesn't make it. I want to see as many bills, if we are trying to solve a problem, that people can come up with. We are trying to solve a problem. Why are we blocking ideas? Why are we blocking the ability for all of you to use your minds to make good decisions? I don't get it. Well, I really do. It's all about whose name is on the bill, whose name is on the amendment. It's all about personalities and that is a shame. That doesn't do this organization any credit. We are 24 people here. We are trying to do a good job. Whether you agree with everybody or not, that is not the issue. But we should be respectful. We should make

sure that every Senator gets every opportunity to be heard and to do their work. So I would ask that this get resolved, and let's put this stuff away. Put it behind us and get on with... We've got five weeks of tough business here. We've got a budget to pass. We've got education funding bills, and we've got some other controversial issues, and we've got to deal with them. And we aren't going to deal with them this way. Now let me also say this. If I, as a Senator, want to make an amendment to any bill, or you as any Senator, want to make an amendment to any bill, you need the tools to do the job. And if they are denied to us by leadership, that leadership should not be sitting in leadership any longer. I would hope that we not come to that. I think that if we push this button much further, we are going to have a real, real, revolt in this body. You can't treat people like this. Remember the old saying, "If you treat one person like that, they can treat anybody like that." So, I would ask all of you to think hard and fast, and I would ask that the President of the Senate, reconsider the route and path that he is going down, and let's get this thing back on the right path. Thank you, Mr. President.

SENATOR KENNEY (RULE #44): On another subject. I just wanted to thank my fellow colleague, Senator Burling, for offering Senate Resolution 1 in regards to the Persian Gulf Veterans who were POWs and who were unmercifully treated as prisoners of war in Iraq. That is my war and I appreciate the fact that he has recognized this. I wish I had done it myself, but I signed on as a co-sponsor. I'd also like to mention that these veterans really aren't looking for compensation. They are looking for respect and accountability. So these monies are fairly extravagant, but I think they are just looking for accountability from the Iraq government. Lastly, I am fortunate enough and blessed to go to a John McCain event on Monday, where he will be premiering his movie down in Washington at the Ronald Reagan Building, and I am going to personally hand this to him. So thank you, Senator Burling.

SENATOR BOYCE (RULE #44): Hopefully I can get through this without the pollen from these flowers affecting my eyes again. I mentioned earlier that I have a family member now in the Iraq conflict. My son, First Lieutenant Robert Boyce. I like that name. Marine Lieutenant. He is a helicopter pilot. He flies the Cobra Gun Ship, and he deployed to Iraq, and left the states anyway, on Monday, and he may not actually be over there yet. I know it sometimes takes several days for the planes to get there because they hop all over. But he is deployed and will be there for at least five months, maybe a year. We're hoping that he will have a good tour over there and it is his first tour of duty outside of the states, his first actual deployment anywhere. He has been in training for about three years. I am very proud of him. I just wanted to say that.

SENATOR EATON (In the Chair): As well as you should be. Please send all our best wishes and safe return to him.

SENATOR GATSAS (RULE #44): Thank you, Mr. President. I ask you again to please remove the letter.

SENATOR EATON (In the Chair): Senator Gatsas, you are in your Rule #44 and that is where we are.

SENATOR GATSAS: So I am asking you to please remove the letter, Mr. President.

SENATOR EATON (In the Chair): I will speak to you afterwards if you wish.

SENATOR GATSAS: I think this whole body should know that the letter is being removed because there are 17 individuals here that this letter affects.

SENATOR EATON (In the Chair): Senator Gatsas, I am not going to discuss that here.

SENATOR GATSAS: Mr. President, I don't want to do this. I am going to ask my colleagues in the Senate that I think that the people that this affects, should go forward with it.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 348, relative to real and personal property conveyances made under powers of attorney.

HB 414, relative to regulation of municipal waste combustors.

HB 697-FN, establishing a committee to study medicaid reimbursement rates for pharmacy providers.

SB 45-L, relative to the Hanover school district tax stabilization fund.

SB 65, ratifying changes to the state building code adopted by the state building code review board.

Senator D'Allesandro moved adoption.

Adopted.

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

May 26, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Good Morning! If the weatherman is to be believed, this rain is being caused by two storm systems, one after the other, which have passed through, gone out into the ocean, picked up more water, and then circled around again, dumping another load of rain on us. Two storms are raining on us four times, and there is nothing that we can do about it. But it is a good reminder that some cycles repeat whether I like it or not. Sort of like black flies coming every spring, and apparently, this blessed weather system. But let me remind you that there are cycles that repeat that you and I can do something about. There are redundant patterns that we can break if we are willing to marshal the strength to do so. For

instance, every two years, the state budget seems to comes up. Every two years there seems to be in this state, an election. I've been here for thirteen years now and it seems to me that the issue of education funding cycles endlessly around this place. Relationships, political alliances, egos, all sorts of things, cycle round and round and round and those are things that we can affect if we choose to, or ignore and just let them go on and on and on. You can't do a thing about the weather, except complain about it or enjoy it. You can do lots of things, however, about our lives and our communities and our relationships and our responsibilities. So I challenge you, every one of you, and every one of you, and every one of you, to decide which cycles you are being called upon to break today, and this week, and this month, and then do it. Let us pray:

Lord of the mighty merry go round, as we move rapidly through the days of our terms, show each one of us whether today we ought to stand and simply enjoy the ride, going round and round, or instead to realize that we are called to step off the cyclical ride and move on to whatever it is that comes next, and help us to know the difference. Amen

Senator D'Allesandro led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

COMMITTEE REPORTS

HB 222-FN, relative to payment of medical benefits costs for disabled group II members of the retirement system. Banks and Insurance Committee. Ought to pass, Vote 4-2. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 222 ought to pass. This bill will pay for medical costs for those persons who are injured while on duty. This is for new employees hired after July 1st of this year and comes before this body every year to cover all new employees. The committee feels that this is an important issue and should be looked at more thoroughly in the Finance Committee. The Banks and Insurance Committee asks for your support on the motion of ought to pass. Thank you.

SENATOR BOYCE: Yes, I rise in opposition to the motion of ought to pass. Not very long ago, we were in the unfortunate situation in this state of having to tell our retired employees that their cost of living increases were severely limited; that we were not able to give them the cost of living as they really ought to enjoy. And, the reason for that was because the special account had been depleted over this last several years by giving medical benefits to retirees who did not, at the time of their retirement, have those benefits, and the other uses of the special account. The special account was intended to fund the cost of living increases for the retirees. But every time we pass one of these specials, to take money out of the special account, to do something other than cost of living adjustments for retirees, it means that there is not money for cost of living adjustments for the retirees. Our first obligation to the retirees is to make sure that their pension benefits are proper. That includes the cost of living adjustments. The cost of living goes up. I understand that there are some people who may not have medical benefits under their retirement, but our first responsibility is to the retirees on their main pension. This bill would subtract from that special fund and, every time we do this, it makes it harder and harder to pay the cost of living adjustment for the rest of the retirees. So I am opposed to the ought to pass and I will be voting no, and I hope you will join me. Thank you.

Motion failed.

Senator Boyce moved inexpedient to legislate.

Adopted.

HB 222-FN is inexpedient to legislate.

HB 611-FN, relative to small group insurers. Banks and Insurance Committee. Inexpedient to legislate, Vote 4-0. Senator Gottesman for the committee.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 611 inexpedient to legislate. House Bill 611 is another bill to try to mend the issues brought on by Senate Bill 110. The committee feels that because of the probable success in the Senate and the expected support of the House on Senate Bill 125, we've decided on the motion of inexpedient to legislate. The Banks and Insurance Committee asks your support on the motion of inexpedient to legislate. Thank you.

MOTION TO TABLE

Senator Hassan moved to have HB 611-FN laid on the table.

Adopted.

LAIID ON THE TABLE

HB 611-FN, relative to small group insurers.

HB 619-FN, relative to skier safety and ski area responsibility. Banks and Insurance Committee. Ought to pass, Vote 4-2. Senator Odell for the committee.

SENATOR ODELL: Thank you, Mr. President. I move House Bill 619 ought to pass. This bill would add snowboarding, snowshoeing, and snowtubing to the ski area liability and skier safety laws. A committee also would be established to study additional winter sports that may need to be considered for inclusion in the ski area liability and to enhance skier safety. The ski industry is very important to New Hampshire's tourism and our economy. This bill will protect and enhance the industry by ensuring the viability of the industry by virtue of maintaining a balanced law that clearly defines the division of responsibility of visitors to ski areas and ski area operators. Please join the Banks and Insurance Committee on the motion of ought to pass. Thank you, Mr. President.

SENATOR GOTTESMAN: Mr. President, when it is appropriate to offer an amendment, I would like to do so.

SENATOR EATON (In the Chair): If you'd offer it and please speak to it as it is being passed out.

Senator Gottesman offered a floor amendment.

Sen. Gottesman, Dist. 12

Sen. D'Allesandro, Dist 20

Sen. Foster, Dist. 13

May 24, 2005

2005-1584s

06/05

Floor Amendment to HB 619-FN

Amend RSA 225-A:23 as inserted by section 3 of the bill by inserting after paragraph IV the following new paragraph:

V. The operator shall provide a sign in a prominent location at or near the freestyle and tubing terrain areas, which shall warn the skier that the use of the freestyle or tubing terrain is entirely at the skier's

own risk. The ski area operator shall be responsible for the design, construction, and structural maintenance of all man-made terrain area features.

Amend RSA 225-A:25, VI as inserted by section 8 of the bill by replacing it with the following:

VI. A ski area operator shall not be liable for personal injury to anyone who trespasses on the ski area property in the absence of willful, wanton, or reckless conduct by such operator.

SENATOR GOTTESMAN: Thank you. I'd like to offer amendment 1584s. I am also handing out a copy of an editorial that came out of the *Manchester Union Leader*, which says that the "ski liability bill goes too far." I was one of the dissenting votes on the committee. We had a discussion over whether or not snowtubing or snowshoeing should be included as an exempt sport, so to speak, and I am not fighting that fight here today. There are two specific issues that I want to address in this bill, and the amendment relates to those two particular issues. One of them is that I have used the exact same language that was in the bill as it previously exists in law, as it relates to nordic ski jumps. That is that, on those jumps, they have to be designed, constructed, and maintained properly, and the ski area operator is responsible for that. The operator also has to put a sign at the top of the jump that it is a dangerous activity and any person who goes down that jump is responsible for their own activity. In this case, we are talking about doing it for any manmade terrain structures that are placed in a ski area such as a ski jump for aerial aerobatics, a rail, a jib, a box, as these things are called in the sport of skiing. I am not questioning whether snowboarding is any different than skiing, we are all lumping these things together. But, if a ski area operator is going to accept money for the privilege of skiing on their mountain, then they ought to do it right, and they ought to construct, in each instance, they ought to construct these items appropriately. Now what we were told, and I spent some time with the ski area operators and I want you to know I am a skier. I am a season pass holder. I love skiing and I love the operators. They are terrific people, and they have been very forthcoming, and very astute in making their arguments here. But what I want to say is that, in this day and age, they have to do it right so that when somebody goes over a jump inappropriately constructed, that that person is not going to risk serious injury or death. In the history, most recent history, that has occurred. I want to speak to the second issue, and then I'm sure there will be some questions, but the second issue has to do with the fact that the bill says that anyone who trespasses on a ski area operator's property, and who is injured, shall have no cause of action. So we are giving complete immunity, which is different than the way the law for trespassers is perceived today. The law for trespassers has to do with the fact that there is no liability for trespasser unless the owner of the property is willful, wanton or reckless in their activity. So I am asking that that language be inserted in this particular section. I think that we have conjured up different sorts of scenarios and I ask you to consider this. When you go to the ski area to watch your grandchildren ski in a race and you don't buy a ticket, and you walk up the mountain to where they are conducting the race, you don't buy coffee and you don't buy lunch, what is your status on the mountain? Are you a welcome business invitee, or if you are injured, are you a trespasser? In the summer when the ski area is closed, and you hike, and you come over the back of one of these mountains, down into the ski area, and no one's there. Are you a trespasser if you are injured, and you

have no claim of action? People can not be allowed to just be wanton reckless and willful with their property. But for that, there would be no liability on a ski area operator, and I ask you to consider this amendment because, as it says in this article, if we don't look after our own skiers, they will be going elsewhere. The ski area operators know that, if they don't provide these activities for people who come in, for skiers and snowboarders, that they will go elsewhere. So we want them to come here as participants, but we want the activities to be safe. Thank you, Mr. President.

Floor amendment failed.

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

May 24, 2005

2005-1581s

06/05

Floor Amendment to HB 619-FN

Amend RSA 225-A:2, IX as inserted by section 2 of the bill by replacing it with the following:

IX. "Skier" means a person utilizing the ski area under the control of a ski area operator for ski and snowboard recreation and competition but shall not include snow tube operation.

Amend RSA 225-A:24 as inserted by section 4 of the bill by replacing it with the following:

225-A:24 Responsibilities of Skiers and Passengers. It is hereby recognized that, regardless of all safety measures which may be taken by the ski area operator, skiing, **snowboarding and snowshoeing** as [~~a sport~~] **sports**, and the use of passenger tramways associated therewith may be hazardous to the skiers or passengers. Therefore:

I. Each person who participates in the sport of skiing, **snowboarding and snowshoeing** accepts as a matter of law, the dangers inherent in the sport, and to that extent may not maintain an action against the operator for any injuries which result from such inherent risks, dangers, or hazards. The categories of such risks, hazards, or dangers which the skier or passenger assumes as a matter of law include but are not limited to the following: variations in terrain, surface or subsurface snow or ice conditions; bare spots; rocks, trees, stumps and other forms of forest growth or debris; **terrain**, lift towers, and components thereof (all of the foregoing whether above or below snow surface); pole lines and plainly marked or visible snow making equipment; collisions with other skiers or other persons or with any of the categories included in this paragraph.

II. Each skier and passenger shall have the sole responsibility for knowing the range of his **or her** own ability to negotiate any slope, trail, **terrain**, or passenger tramway. Any passenger who boards such tramway shall be presumed to have sufficient **knowledge**, abilities, and **physical dexterity** to negotiate the lift, and no liability shall attach to any operator or attendant for failure to instruct persons on the use thereof.

III. Each skier or passenger shall conduct himself **or herself**, within the limits of his **or her** own ability, maintain control of his **or her** speed and course at all times **both on the ground and in the air**; while skiing, **snowboarding, and snowshoeing** heed all posted warnings, and refrain from acting in a manner which may cause or contribute to the injury of himself, **herself**, or others.

2005-1581s**AMENDED ANALYSIS**

This bill:

I. Adds "snowboarding," "snow tubing," and "snowshoeing" to "skiing" in the declaration of policy.

II. Adds definitions to the definitions section and alphabetizes the section.

III. Makes certain changes to the color code signs for marking the ski trail level of difficulty and their placement.

IV. Adds "snowboarding" and "snowshoeing" to skiing as inherently dangerous activities and changes the list of hazards for which skiers and others assume the risks.

V. Prohibits skiers from accessing certain parts of a ski area without written permission.

VI. Establishes a committee to study additional winter sports that may need to be included in the ski area exemption from liability and skier safety.

SENATOR FOSTER: I would like to offer a floor amendment. Floor amendment 1581s. Senator Gottesman said that he wasn't going to fight today, the battle of whether snowtubing is skiing, but I am going to do that. The bill...this law was passed when the original...the laws that exist right now, was passed, I think, at a time that was very different than what we have today. When you think back, those of you who are skiers, back in say twenty years ago, I think that we all knew that we went out to ski, it was just in and of itself, was hazardous, among other reasons because the equipment that we had was not as sophisticated as it is today. If you fell and you fell badly, the skis didn't always come off, you could suffer an injury. The sport has changed a lot and we, Senator Gottesman talked about terrain parks and so forth, and while I have some concerns about the terrain parks, what I want to focus on is tubing, because while I know that when I take my kids skiing today, they are engaged in a sport where they could get injured if they don't pay attention or if somebody runs into them. When I send my kids off to a party to go snowtubing, I don't think they are entering into an inherently dangerous activity, but that's what this bill says. It says that snowtubing is inherently dangerous. It is an inherently dangerous sport. I don't think of snowtubing as a sport. I think of it as a recreational activity. I think of it as the functional equivalent of going down a water slide, which I have never heard of being described as a sport or you know, something like a rollercoaster, although, I will confess there is some control with a tube. There isn't a whole heck of a lot. So what this amendment does, is it carves out tubing. During the...from the bill it leaves everything else intact. I agree that snowboarding has to be added. I frankly think that there was a case today on whether snowboarding is skiing. I think it probably is. I think the court would say that, but the Supreme Court has ruled that tubing is not skiing. I don't think any of us think of tubing as skiing. Tubing is generally undertaken at a restricted part of the area. It is a controlled area. What we heard in the testimony, and I asked questions about this is, ski area operators say they try to be very careful, and they will sometimes shut the area down if it gets too fast, and they don't have a whole heck of a lot of injuries. I say, exactly the point. Because they have some responsibility. They act responsibly. That isn't to say that every area wouldn't act responsibly if we passed this law, but some might say you know, the thrill of the sport is how fast you go, let's make it really fast.

We will attract people. The other thing I want to make clear to you all is that, if we pass the bill the way that it is, somebody who runs a tubing park and has no ski area at all, has nothing to do with the skiing industry, is covered by this bill. So we are deciding here to carve out a particular recreational activity and give it complete immunity. I asked people to try to give me some comfort that if somebody acts in a negligent way or doesn't run their tubing park in an appropriate fashion that this bill wouldn't give them absolute immunity, and I frankly got no response at all. The Supreme Court's very clear that if you don't put an affirmative duty to operate safely, there's absolute immunity. So I would ask you to consider the amendment which just takes tubing out and leaves everything else in place, and treats it differently because it is different. It is not skiing. Thank you, Mr. President.

Floor amendment failed.

The question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

HB 647-FN, relative to restructuring the department of revenue administration. Banks and Insurance Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. As a result of a study committee last year, recommendations have been made in House Bill 647 that changes some people around and makes for better service, telephone service and questions asked at the department. We ask that the Banks and Insurance Committee motion of ought to pass be upheld. Thank you.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 665-FN-L, relative to the applicable minimum wage for hourly employees. Banks and Insurance Committee. Inexpedient to legislate, Vote 4-2. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 665 inexpedient to legislate. Most people today are not getting minimum wage and we feel that this bill would greatly affect the hiring of young folks during summer employment and would not be a good way to go. So the committee, on a 4-2 vote, asks this group to have an inexpedient to legislate on this piece of legislation. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I object to the inexpedient motion on House Bill 665 and I would like to speak to that. In fact, I find it quite difficult to stand here and believe that we have a group of legislators who are actually opposing raising the minimum wage in this state over the next two years, fifty cents a year. I believe there is tremendous misunderstanding about who receives minimum wage and why it is important that we should help those individuals who can barely get by, by paying their rent and their groceries each month. If we look at what has happened just over the last six months with the increase of gasoline prices, we should be sensitive as a legislative body as to the need to raise this wage. New Hampshire has the lowest minimum wage of any state in New England. It also means, because we have so many borders, that many of the people on the edges of our community are having to look to Maine or Massachusetts or Vermont,

in order to get the wages that they deserve. I think it is important to understand who are the individuals who receive minimum wage. Yes, there are young workers, but more, there are single family parents and senior citizens who deserve our help. In New Hampshire, five percent of our workers earn minimum wage or near minimum wage that is \$5.15 an hour. Close to half of these workers are full time workers. Three percent of full time workers are earning near minimum wage or minimum wage. We are hearing, when I talk to people, "well no one in New Hampshire receives minimum wage." That is not true. Over three-fourths of these full time workers at or near minimum wage are twenty-five or older. You need to understand that females represent sixty percent of all full time workers earning at or near minimum wage. These are parents in single families or women who are trying to supplement their family's income and are only able to receive minimum wage because they have other constraints, either their children or senior members in their family that make it possible for them to move forward to other types of jobs. I am here to say to you, that it is an economic justice issue. It is fundamentally the right thing to do in this state, and I am embarrassed that we, as a legislative body, do not believe, looking at the vote that came out of committee, that this is the right thing to do. It is the necessary thing to do. It is a small step forward to support these families that are at the very bottom of our income rung. I ask all of you to overturn the vote of inexpedient to legislate and support this very minimal increase to the minimum wage. Thank you.

SENATOR HASSAN: Thank you, Mr. President. I rise just to recount what my evening was like the day the House passed this minimum wage bill that we are considering this morning. I came home that evening to find my twelve-year old running down the stairs to me saying, "Mom, mom, did you hear they passed the minimum wage in the House?" I said, "Yeah, I did." And my daughter, I thought she knew me better than this, looked at me and said, "Mom, where are you on that?" and I said, "Well, I favor the minimum wage. I want...we should increase it for all the reasons that the House had for voting the way it did." And my daughter looked at me and said with great relief in her voice, "Good Mom, 'cause I did the math. You can't live on that." From the mouth of a twelve-year-old ladies and gentlemen. From the mouth of a twelve-year-old. So, with that, I urge this body to overturn the inexpedient to legislate and to pass a modest increase in the minimum wage and take a step forward for the dignity of some of the most hardworking people in our state. Thank you.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the pending motion and urge the Senate to take a different course. I have two arguments I would like to make very briefly. The first goes to that question which I have heard so many of you ask, "Why does government have a role in this area?" Well government has a role in this area because for years in the American situation, government has served as the referee on the edges of issues involving economic justice. We do it with usury laws. We talk about how government uses its power to protect consumers from people who would charge exorbitant interest rates. We also use the power of government to ensure that people are paid a marginally fair wage for the labor that they offer in an economic market where labor is often undervalued. Well we are in a situation where our current minimum wage undervalues labor in New Hampshire and we should correct that by making a very modest increase over the course of the next two years. My second argument is simply this. A colloquy took place in

our hearing process. I made the argument that New Hampshire has a direct financial interest in the level of minimum wage, because if minimum wages are too low, then in effect, the taxpayers of New Hampshire subsidize people who employ folks that then have to go to the state to get the services they need just to survive. I was challenged in that assumption, so I actually went to our Senate Research folks and they came up with some wonderful material. It's true that there have been no direct academic studies of this issue in New Hampshire, but there have nationwide. The question is unequivocal. People who are paid minimum wage are absolutely the population that is forced to seek government benefits to stay alive. They need Medicaid. They need free hospitalization. They need medical care from the emergency rooms. We have an interest in protecting the taxpayers of the state of New Hampshire. One of the best things we can do to protect the taxpayers of New Hampshire is require that all employers who employ more than six people, pay a fair minimum wage. By moving the minimum wage up, we protect the taxpayers of New Hampshire. Thank you, Mr. President.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the inexpedient to motion and hope that we would ought to pass this change in the minimum wage. Twenty-five thousand people in the state of New Hampshire make less than \$6.65 an hour. Twenty-five thousand people make less than \$6.65 an hour. Have you ever bought a cup of coffee in the morning at Dunkin Donuts? It is a \$1.43. If I'm making \$6.65 an hour and I buy a cup of coffee, I am taking a significant percentage of my hourly wage just to buy a cup of coffee. Twenty-three hundred of those people make \$5.15 an hour. Sixteen thousand, seven hundred of those people make between \$5.16 and \$6.14. Six thousand of those people make between \$6.15 and \$6.14 an hour. Excuse me, \$6.64 an hour. Minimum wage. The bare minimum. The bare minimum. It just seems to me that it is in our best interest to create and advance the minimum wage. FDR put the minimum wage in place. It was part of the new deal. We were going to give people a new deal in this country. We provided social security benefits, we provided a minimum wage. We provided opportunity for people. We brought people out of the doldrums and gave them an opportunity to earn a living. At \$5.15 an hour, you can't make a decent living. Senator Hassan's child was absolutely right. "Hey Mom, who is working for \$5.15 an hour and surviving?" Nobody. This is an attempt to just move it up. I'm not talking about a dramatic leap. It is over a period of time. And we are asking you to do something that is responsible. The New Hampshire worker has always been a productive worker. We know through the ages that a person who is working for you in New Hampshire gives you that full day of labor. We ought to be consistent in paying at least the minimum wage for that good quality labor that this state's always been very proud of. It's the working force that we are proud of. It's one of the ingredients that's provided for our economic viability over the years. The quality of our working force. Well twenty-five thousand of those workers make minimum wage. Let's do something to make that better. Thank you, Mr. President.

SENATOR LARSEN: You know, I think there are few bills that have a greater effect than what bill we are debating today. You've heard some of the statistics. You've heard twenty-five thousand people make less than \$6.65 an hour. You've seen that the primary beneficiaries of the minimum wage hike are not the teenagers that we always hear are those who are going to lose jobs, but in fact, women. Women in fact who make forty percent of the minimum wage earners are sole source income for

their households. Sixty percent of the workers that will benefit from a minimum wage increase are women. Seventy-two percent of the minimum wage workers are adults age twenty or over. So it is time that we look at facts on this, not just the rumors that teenagers are going to lose jobs. In fact, all the information that we've seen and we have large files on this, I suspect many of you do, is that teenagers have continued to get jobs even though wages have increased in other states, minimum wage has increased in other states. And in fact, all the experience, including for those in the restaurant industry, are that increasing the minimum wage has not in fact, caused problems, but in fact, has caused greater success in those states and helped to lift people out of poverty. About five percent of New Hampshire's workers earn the minimum wage or near minimum wage hours. Forty-four percent of those workers are full time workers. Three percent of all full time workers make minimum or near minimum wage. Three quarters of full time workers at minimum wage are twenty-five or over. Thirty percent of full time workers at minimum wage are older than forty-five. And forty percent of full time worker at or near minimum wage have children. So we are talking about helping those most in need. We're talking about a bill which all of our surrounding states have recognized needed to happen. In Maine, a worker could be making a \$1.20 more because they changed the minimum wage law. In Massachusetts, a low income worker could be making \$1.60 more, and in Connecticut, almost \$2 more. That difference of \$48 to \$78 for a forty-hour work week, adds up to \$3,900 in a year. What difference does this make? Does it put our small businesses out of business? Wrong. It does not. All the evidence shows that that doesn't happen. But what it does do is help to eliminate poverty in this state. For those of us who have been sitting through countless hours of budget hearings and Medicaid and other issues, we can reduce our TANF roles by increasing the minimum wage. For those of us who worked for years and know of the effects of homelessness in this state. We can reduce homelessness by providing a minimum wage for those who are working. For those of you worried about how we are going to balance the budget with Medicaid cost increases, we can reduce those who need Medicaid by giving a living wage. We're not even talking about a living wage. Our own Commissioner of the Department of Labor said clearly to me personally, "\$5.15 an hour, that's a poverty wage. You can't survive on \$5.15 an hour." That same Commissioner said that "an increase would make New Hampshire more competitive with surrounding New Hampshire states." It makes good sense. If you want to eliminate poverty, increase the minimum wage. If you want to reduce TANF costs, increase the minimum wage. If you want to see homelessness reduced in this state, increase the minimum wage. If you believe that it's time for the state to support those in need, increase the minimum wage. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. I never understood the argument that was given to me that, if we raised the minimum wage, that it would affect everyone else who is already earning way above the minimum wage. I still don't understand it today. But that's all I hear. Do we forget what it was like to live on a minimum wage? Did we forget what it's like to do without? Unfortunately, there are people out there like the two hundred people in Nashua who are going to be laid off from Batesville Casket who are all making more, but who are now going to be faced with starting over again. On behalf of people like that who need to have some decent base to start over again, we need to have an increase in the minimum wage. Thank you.

SENATOR MARTEL: Thank you, Mr. President. There has been a lot of compelling testimony before I stood up here and I'm not going to try to dispute it because they have some very good points and some that I disagree with of course. But I am going to bring you down, back in history where I've been privileged of having an eighty-eight year old mother who lived through the depression; who lived through the new deal; who lived through three world wars, and worked all her life. As she was growing up, there was no frivolous idea of life back in those days when they lived on a farm in Bedford. They lived off the earth. They lived off the animals. They shared their wealth with their neighbors, friends, relatives, in order to help them through dire times. As she grew a little older, they were hit with the depression. They lost everything they had except for their house and the animals of the farm and the farm land. Without flinching, my grandfather had just lost his construction business and lost his two gas stations and his store. But they continued and they worked off the farm. I am just making this as a commentation here, Mr. President. It has nothing to do with farming. This has to do with how they addressed, with hardly any money, no money, and how they addressed living at a minimum wage. And, they did the same thing in helping others. She then, when she got married, decided she was going to work in shoe factories. My mother had a high school education. That is all that she had. She went to school...she went to work at International Shoe in Manchester and was making thirty-five cents an hour back in 1940. She then, a little later on, went to J.F. McEllwan where she worked for fifty-seven years in the same place and started off at sixty-five cents an hour. People have been crying about the minimum wage ever since those early days, since the thirties and forties, that the minimum wage needs to be increased. It has been increased a few times, and yet we go and we ask for the minimum wage to be increased again. What does that do to our economy? It has a dual effect. First, most small businesses already offer wages that are higher than a minimum wage. Those who can't, it is not because they don't want to, they just can't do it and they just struggle with that every day, and they pay their employees, at least that minimum wage and give them whatever they can and when they can afford it. But, let's look at the other side of this coin. What does that do to the financial backbone of businesses in the state? Many of these small businesses, if they were to pay even higher wages, would not even be able to get their businesses off the floor. These are the ones that just barely can make it and they would probably have to close. There are plenty of jobs out there that are offering wages which are compensable to the amount of work and the type of work that an employee would do on a daily basis. Sure, I agree with this in some cases where some people are not making enough money and we just heard the figure, twenty-five thousand people this morning, out of a population of 1,250,000. It may be a little higher than that now, but I surely want to make sure that we all understand the ramifications that if we bring this forward, and I am doing this not in a mean spirited way, I am just doing it as an understanding of economics, at the macro and micro levels. And, Mr. President, I will sit now because I have spoken long enough. I wanted to make that analogy so that we can understand this problem is not something new. This problem has been going on for decades and I thank you, Mr. President. I ask that you entertain the motion from the committee. Thank you very much.

SENATOR GREEN: Thank you, Mr. President. **TAPE CHANGE** in opposition to the amendment from the committee. I think that we, as

individual Senators, regardless of political party, have a responsibility to do what we think is right and what we think is appropriate under the circumstances. As you know, I am a sponsor of this piece of legislation. When I signed to sponsor that legislation, I felt that it was the right thing to do. On that basis, I proceeded with getting the necessary information to follow up my feeling that it was the right thing to do. When I testified before the committee, I basically made it clear that those who are opposing the legislation are opposing it kind of half-heartedly because they do not want to be viewed as scrooge. They want to make sure that they have some good basis for their arguments. So I said, okay, let's look at this group of people who are opposing this piece of legislation. Now they happen to be business people. But I am going to tell you, it is not all the business people because I have talked to a lot of business people. It depends on who you talk to. The restaurant business is a difficult one. But let me tell you, most people in restaurants do not make minimum wage. In fact, the average wage for people waiting is about \$15 to \$18 an hour. So they aren't worried about minimum wage. Who are the minimum wage people in the restaurants? The people who are behind the scenes in the kitchen washing dishes. I don't know if any of you have worked for minimum wage, I have. That's how I got through school. You got what you could get. So it is the business community, not the BIA. I am sure if you are a person who worked for a company and it is a member of the BIA, that there is hardly nobody making minimum wage. So why are they concerned? They say that it is going to impact the higher wage people, because if you give people a raise in the minimum wage, you are going to have to increase everybody else. I don't know how you argue with that because if nobody is working at the minimum wage, what are you worried about? So it's a false argument because, if you answer them one way, it's going to affect everybody else. If you answer them another way, well don't worry about it, there is nobody on the minimum wage. You can't have it both ways. Who are the people that we are talking about here? This is what my research basically determined. It is the young workers. And by the way, my understanding of this language that is not in this bill, if you go to the exceptions in the law, if you are under 16, it doesn't apply. So we're not talking about that group. So we're talking about young workers basically, 18, 17, 18, maybe to 25. I still consider that young by the way. Single family parent who is trying to make it, trying to make it, and I think, the minimum wage is one thing, but if it does affect them getting a little extra, then I think that's good for the system. I will tell you why in a minute, and senior citizens. The driving force of senior citizens. Let me tell you what it is. It is an interesting one if you do the research and you find out. Senior citizens who are retired and on fixed income, the biggest thing they can't keep up with is medical premium costs and prescriptions. So they find themselves in a situation where they want to remain independent, so they go to work and they take the job that they can get, at the minimum wage, to make ends meet. That's what they go to work for. If they didn't have to go to work, do you think they would go to work? Some would, yes, but as a general trend? I don't think so. They are trying to pay the bills, and their premium costs for insurance and for prescriptions is putting them in poverty. Their retirement cannot handle it. Who makes the minimum wage in New Hampshire? Five percent of New Hampshire workers earn minimum or near minimum hourly wage from \$5.15 to \$6.65, which is by the way, what we are trying to do here. We are talking about 50 cents a year for two years. What are we talking about here? Close to half or

forty-four percent of these workers are fulltime workers. About three percent of all full time workers make minimum or near minimum. Over three-fourths of full time workers who are at or near minimum wage are twenty-five years old or older. We are not talking about all young people. About forty percent of full time workers near minimum wage have children. That's the group that I'm talking about. Females represent about sixty percent of all full time workers in this state. That's who you're talking about. I ask you to please remember when you were starting and when you made minimum wage. And as we all retire, remember, we may all be working again making minimum wage. This is a lifetime issue for all of us. Now let me talk about cause and effect for a minute. This one here, really I can relate to because I dealt with it on a first hand basis. Everything we do up here, if we're not careful, all we're doing is shifting the burden. You're not solving the problem. It may make us all look good so we can stand up and take a bow, but we're not solving the problem, we are shifting it. My Welfare Director from the city of Rochester testified before the committee. Lynn Carey. She brought to this committee, what I am talking about, the shifting to local communities. Here is her testimony. This is a summary, done well in the record. She testified "that ignoring this issue will make it worse. If we don't increase the minimum wage, it will make matters worse" at the level that she is working, which is the local welfare office. How many of you know what's happening to rents in this state? I'm sure you do. How many of you know how people find affordable housing in this state? You've dealt with housing authorities and section eights and these kind of things. We are always trying to figure out how to provide affordable housing. We call it today something different. We call it workforce housing, but it's the same issue. So if you know this issue...in her area, which is the area that I am talking about, the city of Rochester, "a typical scenario for a family of four: \$1,200 for rent, \$500 for food, \$40 for electric and \$300 for fuel oil all in a month. This does not include any luxuries such as daycare or car payments. This would require two people to be working 40 hours a week each and earning each, at least \$6.37 an hour." Six thirty-seven. That's minimum. We're talking minimum salary here. We're not talking living fat off the land. I just don't understand what the big debate is. If it's a philosophical debate, then that's fine. We're not going to win that because of politics. But if we're talking about practicality, or we're talking about helping people who really need help, we should be passing this piece of legislation without any debate to speak of. I've spoken longer than I really wanted to, but I just wanted you to understand why I felt strongly about sponsoring this piece of legislation. Thank you, Mr. President.

SENATOR FOSTER: Thank you, Mr. President. I rise in opposition to the committee report as well. A lot has been said so I won't reiterate except to say unless this is a philosophical debate, I think the folks who came and spoke for and against the bill, tell us that the time, to raise the minimum wage is now. What I mean by that is the only three organizations, four organizations came and spoke against. The Lodging and Restaurant Association opposed it. I understand why they did. They have perhaps a somewhat of a unique issue, although at least in my neck of the woods, interestingly enough, there are a heck of a lot more restaurants over the border than in Nashua, and the minimum wage in Massachusetts is quite a bit higher. So I can't find any competitive disadvantage, at least they would face, in my neck of the woods. But he came out and he spoke and he made his case. I respect him for that. I happen to disagree with it, but I respected him for coming out and speaking against

it. There was a store owner who raised some concerns. Didn't like the idea of mandates at all, and that's a philosophical perceptive and I understood that. Then there was one business organization that signed in opposition, didn't speak. After that, that's it. Two. Two I should say. There was also the New England Conveniences Stores. I am not sure what that is. Came in, but they didn't speak either. There were a bunch of organizations like the chambers around the state, and none of them came. None of them came. I am not saying they are in favor of the bill, they probably aren't. But they may, as business leaders say, "You know, now's the right time. It's been down for a while. It is not really going to hurt us." I guess that's what I'm getting at. If there was...if this was going to cause such a terrible problem, I think we would have had a lot more folks, especially it having already passed the House, come in and tell us this is really going to hurt us and our business climate, and they didn't come out and tell us that. It's time to go ahead and do this. You know, as I think of the people in my district, I'm sure I have a lot of people who are earning the minimum wage and near the minimum wage, and I think about what's happened, as Senator Green talked about, the cost of living. Look at the cost of gasoline. What if you have to drive, say from Nashua to Manchester? Just the cost of gasoline is eating away at what you're earning and, you know, later on in this calendar, there's a suggestion that making that drive is going to be even more expensive, which I hope won't happen. So I would urge you to think about whether the business community's really asking for this or whether it is some sort of philosophical belief. If you have a philosophical belief that shouldn't be any minimum wage period, go ahead and vote for the motion of inexpedient. But I just don't see the economic argument not to raise the minimum wage now. Thank you, Mr. President.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Estabrook.

Seconded by Senator Hassan.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Committee report of inexpedient to legislate is adopted.

HB 129-FN-L, establishing a high performance school incentive. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Estabrook for the committee.

Senate Education

May 17, 2005

2005-1456s

04/10

Amendment to HB 129-FN-LOCAL

Amend the title of the bill by replacing it with the following:

AN ACT establishing a high performance school incentive and relative to the use of system benefits charge funds for school building projects that promote indoor air quality or energy efficiency.

Amend RSA 198:15-b, I-a(a) as inserted by section 1 of the bill by replacing it with the following:

I-a.(a) A school district, or other entity listed in paragraph I of this section, which is in compliance with the requirements of this section, shall be entitled to receive an additional grant equal to 3 percent of the total construction costs. To be eligible for additional grant moneys, construction projects, as built, shall meet the criteria for designation as a high performance school under the most recent edition of the New England version of standards from the Collaborative for High Performance Schools. Application for the grant of additional moneys shall be submitted on forms developed by the department of education.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 4:

2 School Building Aid; Approval of Plans, Specifications, and Costs of Construction or Purchase. Amend RSA 198:15-c to read as follows:

198:15-c Approval of Plans, Specifications, and Costs of Construction or Purchase. A school district maintaining approved schools, desiring to avail itself of the grants herein provided shall have the plans, specifications, and cost estimates for school plant construction or proposals for the purchase of school buildings, or both, and the costs for them approved by the state board prior to the start of construction. For this purpose the district shall submit its plans, specifications, cost, and purchase estimates in writing to the department of education on such forms as the department prescribes. ***A school district shall also submit a copy of any application for energy efficiency reimbursement under RSA 374-F. The department of education shall coordinate with the public utilities commission to ensure that eligible school districts have submitted applications for funding reimbursement and technical assistance as available from energy utility companies to promote indoor air quality and energy efficiency in public schools.*** Application for school building aid shall be submitted before January 1 of each year in order to be eligible for school building aid in the fiscal year following the year of submittal. The department of education shall not approve the plans, specifications, cost, or purchase estimates, if in the department's judgment the facilities planned will not adequately meet the educational requirements, or if its cost estimates are excessive or unreasonable. The department of education shall not approve the plans, specifications, cost, or purchase estimates if in the department's judgment the proposed construction or purchase is in conflict with effective statewide planning. Necessary costs of the purchase of school buildings may be determined by any recognized method of real estate appraisal with appropriate adjustments for remodeling or other expenditures. Upon approval of the construction or purchase, or both, by the department of education, the school district shall be entitled to receive an annual grant as provided herein.

3 New Paragraph; Electric Utility Restructuring; Implementation. Amend RSA 374-F:4 by inserting after paragraph VIII the following new paragraph:

VIII-a. Any utility that collects funds for energy efficiency programs shall, subject to the approval of the commission, set aside 1/3 of such funds collected in each year for eligible public school construction or renovation projects that are designed to improve indoor air quality or energy efficiency. Any funds not awarded to public school applicants may be used for other eligible applicants.

2005-1456s**AMENDED ANALYSIS**

This bill establishes criteria for designation as a high performance school by which a school district may be eligible for additional school building aid. This bill also requires that any utility that collects funds for energy efficiency programs shall set aside 1/3 of such funds collected in each year for eligible public school construction or renovation projects that are designed to improve indoor air quality or energy efficiency.

SENATOR ESTABROOK: Thank you, Mr. President. I move HB 129 ought to pass with amendment. HB 129 establishes criteria for designating a school construction project as a high performance school by which the school district may be eligible for additional school building aid. This approach to improving the energy efficiency and maintenance of future school buildings, had wide support in committee as it did in the House. The committee amendment creates greater opportunities for districts to access funding to improve energy efficiency and air quality in existing public schools. Returning members may remember discussion in the Senate last term on the need to improve and promote healthy schools for our children and the serious air quality issues that many of them currently face. The amendment requires that any utility that collects funds for energy efficiency programs create future plans for approval by the PUC which maximize public school participation in their programs to improve energy efficiency, including those which improve indoor air quality by enhancing energy efficiency. Thus, school renovation projects will have greater access to these programs funded by the systems benefits charge. Following the committee's unanimous action on the amendment, concerns were raised by several stakeholders about the wording of the final paragraph of the committee amendment. So I ask your support for the committee amendment initially and then I will offer a floor amendment to address those concerns. Finally, Mr. President, I want to commend the Education Committee, the bill's sponsors, and supporters of the bill, for taking this step forward in promoting healthy schools for our children. Thank you, Mr. President.

Amendment adopted.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

May 25, 2005

2005-1624s

03/10

Floor Amendment to HB 129-FN-LOCAL

Amend RSA 374-F:4, VIII-a as inserted by section 3 of the bill by replacing it with the following:

VIII-a. Any electric utility that collects funds for energy efficiency programs that are subject to the commission's approval, shall include in its plans to be submitted to the commission program design, and/or enhancements, and estimated participation that maximize energy efficiency benefits to public schools, including measures that help enhance the energy efficiency of public school construction or renovation projects that are designed to improve indoor air quality. The report required under RSA 374-F:4, VIII(f) shall include the results and effectiveness of the energy efficiency programs for schools and, in addition to other requirements, be submitted to the commissioner of the department of education.

SENATOR ESTABROOK: Thank you, Mr. President. I move floor amendment 1624s. This amendment still refocuses these programs to enhance benefits to schools, but removes the strict one-third requirement contained in the committee amendment. A group of stakeholders, including major utilities and the Office of Energy and Planning, have agreed that the wording of this floor amendment accomplishes the committee's intent while providing the flexibility and planning that the process needs. Though plans are approved annually, there is multi-year planning involved, which would be difficult under the earlier amendment. The floor amendment also creates a requirement for reporting to DOE, which will facilitate cooperative outreach to schools and provide information for us on the extent of program utilizations by schools. So I ask your support for floor amendment 1624s. Thank you, Mr. President.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

SENATOR BOYCE: I rise in opposition to the bill as it stands at this moment. We're in a situation where we are short of funds to begin with. And I am all in favor of schools being built that are high performance. I was disappointed to find out that this had nothing to do with drivers ed. But the way that this is structured, it gives an added incentive of 3 percent increase in state funding to schools that are going to be built energy efficient. I think that a better way to go about this would be to decrease all that do not comply with this by 3 percent, and, in order to get the full funding, you have to comply with this. That would be more fiscally prudent because this energy efficient school is going to save the school district money. They will, in the long run, save a lot of money by doing this. So I believe that by reducing the amount paid out if you do not comply with this, would be the better method, and I would support that and perhaps, when it comes to Finance, we can get that switched back the other way. I will vote for the bill as it stands at this point. I am not in favor of this because of that, but I will see if we can fix it in Finance. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. As I said, this approach to increasing the energy efficiency and maintenance of our future school buildings had wide support in the House and in committee. That is because we all know that when a district puts a building construction project forward, many, many times, the project that is put to the voters, is the project that is the least expensive. And the least expensive project is often the project which short-changes these particular needs of our schools, and, in the long run, not only results in greater costs to schools, but results in poor health for our children. I think anything we can do, including this very small incentive to build healthy schools, is something we should all support.

Adopted.

Ordered to third reading.

HB 248, authorizing semi-annual payments of school building aid. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Johnson for the committee.

Senate Education

May 17, 2005

2005-1457s

04/10

Amendment to HB 248

Amend the title of the bill by replacing it with the following:

AN ACT authorizing semi-annual payments of school building aid, relative to the purchase or lease-purchase of equipment designed to improve energy efficiency or indoor air quality in school buildings, relative to the collection of certain fees by the postsecondary education commission, and relative to surety indemnification bonds.

Amend the bill by replacing all after the enacting clause with the following:

1 School Building Aid; Annual Grant. Amend RSA 198:15-a to read as follows:

198:15-a Annual Grant for the Payment of Debt Service for School Construction. To aid local school districts in meeting the costs of the payment of debt for school buildings and educational administration buildings, including office facilities for school administrative units, and to meet the costs of leasing permanent space in a building which is used for the operation of a high school vocational technical education program, the department of education shall, from funds appropriated by the general court to carry out the provisions of this subdivision, pay annually to the school districts of the state, sums in accordance with the provisions of this subdivision or the alternative school building aid provisions under RSA 198:15-u through RSA 198:15-w, depending on which option a school district elects. *The annual grant to school districts shall be made in 2 approximately equal payments, one in October and one in April of each fiscal year. No payment shall be made to a school district prior to the district's first payment on the amount of principal borrowed.*

2 New Subparagraph; School Building Aid; Amount of Annual Grant. Amend RSA 198:15-b, IV by inserting after subparagraph (f) the following new subparagraph:

(g) Purchase or lease-purchase of mechanical, structural, or electrical equipment, including the cost of installation of such equipment, which is designed to improve energy efficiency or indoor air quality in school buildings. All grant amounts awarded under this subparagraph shall be returned to the state if such equipment is removed from the school building by the vendor due to the school district's failure to comply with the terms of the lease-purchase agreement. Lease-purchase agreements shall be subject to the requirements of RSA 33:7-e.

3 Postsecondary Education Commission; Surety Indemnification. Amend RSA 188-D:20-a to read as follows:

188-D:20-a Surety ***Indemnification*** [Bond]. Before a license is issued or renewed, a school shall meet the requirements of this section or RSA 188-D:20-b, ***by providing acceptable surety indemnification*** as determined by the postsecondary education commission.

I. A surety bond shall be provided by the school in an amount prescribed by the postsecondary education commission. The obligation of the bond is that the school, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the school and entity enrolling as students. The bond shall be issued by a company authorized to do business in the state of New Hampshire. The bond shall be issued in the name of the postsecondary education commission, and is to be used only for payment of a refund of tuition and instructional fees due to a student or potential student, and the expense of investigating and processing the claims.

II. The amount of such bond shall be based on income from tuition at 10 percent of gross tuition, with a \$10,000 minimum. If a school licensed under RSA 188-D:20 should fail to provide the services required in a contract with any entity, as determined by a court of competent jurisdiction, the bond shall be forfeited, and the proceeds distributed by the postsecondary education commission in such manner as justice and the circumstances require.

III. The bond company may not be relieved of liability on the bond unless it gives the school and the postsecondary education commission 90 days written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the school's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the postsecondary education commission.

IV. For the purposes of this section the forms of indemnification other than a surety bond which may be furnished to the postsecondary education commission for licensure are the following:

(a) An irrevocable letter of credit, maintained for the licensing period as a minimum, issued by a financial institution authorized to do business in New Hampshire in an amount to be determined by the postsecondary commission with the postsecondary education commission designated as the beneficiary; or

(b) A term deposit account held in a financial institution authorized to do business in New Hampshire, payable to the postsecondary education commission, held in trust for the benefit of students entitled thereto under this section. Said account shall be maintained for the licensing period as a minimum, in an amount determined by the postsecondary education commission. All interest shall be paid annually to the appropriate school, unless the term deposit account is activated due to a school closing. Should the licensee for any reason, while not in default, discontinue operation, all moneys on deposit, including interest, shall be released to the appropriate school subject to the approval of the postsecondary education commission.

4 Effective Date. This act shall take effect 60 days after its passage.

2005-1457s

AMENDED ANALYSIS

This bill:

I. Provides that the annual grant for school building aid shall be made in 2 equal payments.

II. Includes the purchase or lease-purchase of equipment designed to improve energy efficiency or indoor air quality in school buildings in the definition of "construction" for the purpose of calculating school building aid grants.

III. Specifies acceptable forms of surety indemnification that a school must provide to the postsecondary education commission.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 248 ought to pass. I also ask you to vote down the amendment that is listed in the calendar due to a mistake in drafting. When I am finished with my remarks, Senator Bragdon will be introducing a floor amendment which will amend the bill as approved by the committee. House Bill 248 with the floor amendment provides that the annual grant for school building aid shall be made in two equal payments. It also includes purchase

or lease-purchase of equipment designed to improve energy efficiency or indoor air quality in school building aid calculations. This bill further mandates that a detailed maintenance plan be submitted with any school building aid request. This bill will help the Department of Education more efficiently distribute aid and promote using energy equipment that will improve air quality, and the Education Committee unanimously supports this bill and hopes that you will vote ought to pass. Thank you, Mr. President.

Amendment adopted.

Senator Bragdon offered a floor amendment.

Sen. Bragdon, Dist. 11

May 26, 2005

2005-1641s

04/10

Floor Amendment to HB 248

Amend the title of the bill by replacing it with the following:

AN ACT authorizing semi-annual payments of school building aid and relative to the purchase or lease-purchase of equipment designed to improve energy efficiency or indoor air quality in school buildings.

Amend the bill by replacing all after the enacting clause with the following:

1 School Building Aid; Annual Grant. Amend RSA 198:15-a to read as follows:

198:15-a Annual Grant for the Payment of Debt Service for School Construction. To aid local school districts in meeting the costs of the payment of debt for school buildings and educational administration buildings, including office facilities for school administrative units, and to meet the costs of leasing permanent space in a building which is used for the operation of a high school vocational technical education program, the department of education shall, from funds appropriated by the general court to carry out the provisions of this subdivision, pay annually to the school districts of the state, sums in accordance with the provisions of this subdivision or the alternative school building aid provisions under RSA 198:15-u through RSA 198:15-w, depending on which option a school district elects. ***The annual grant to school districts shall be made in 2 approximately equal payments, one in October and one in April of each fiscal year. No payment shall be made to a school district prior to the district's first payment on the amount of principal borrowed.***

2 New Subparagraph; School Building Aid; Amount of Annual Grant. Amend RSA 198:15-b, IV by inserting after subparagraph (f) the following new subparagraph:

(g) Purchase or lease-purchase of mechanical, structural, or electrical equipment, including the cost of installation of such equipment, which is designed to improve energy efficiency or indoor air quality in school buildings. All grant amounts awarded under this subparagraph shall be returned to the state if such equipment is removed from the school building by the vendor due to the school district's failure to comply with the terms of the lease-purchase agreement. Lease-purchase agreements shall be subject to the requirements of RSA 33:7-e.

3 Effective Date. This act shall take effect 60 days after its passage.

2005-1641s**AMENDED ANALYSIS**

This bill:

I. Provides that the annual grant for school building aid shall be made in 2 equal payments.

II. Includes the purchase or lease-purchase of equipment designed to improve energy efficiency or indoor air quality in school buildings in the definition of "construction" for the purpose of calculating school building aid grants.

SENATOR BRAGDON: Mr. President, wasn't the request of the previous speaker to vote down the floor...the calendar amendment?

SENATOR EATON (In the Chair): Does your amendment take all after the enacting clause?

SENATOR BRAGDON: Yes. It does replace all after the enacting clause.

SENATOR EATON (In the Chair): Thank you.

SENATOR BRAGDON: Thank you very much. Mr. President, I would like to move floor amendment 1641. I'll speak to that as it is being passed out. The calendar mistakenly combined the amendments for bills 448 and 248 into 248. So what I am passing around now is the amendment that just pertains to 248 exactly as recommended by the committee. And, as Senator Johnson said, it just has the building aid done in two more or less equal payments like it was done in prior years.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 448-FN, relative to the collection of certain fees by the postsecondary education commission. Education Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

Senate Education

May 17, 2005

2005-1450s

04/05

Amendment to HB 448-FN

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 4:

3 New Paragraph; Postsecondary Education Commission; Rulemaking. Amend RSA 188-D:8-a by inserting after paragraph V the following new paragraph:

VI. The establishment and collection of fees for direct and indirect costs associated with in-state and out-of-state visits, reviews, and requests from institutions related to the degree-granting authority of the postsecondary education commission.

2005-1450s

AMENDED ANALYSIS

This bill authorizes the postsecondary education commission to collect fees to pay for expenses related to its degree-granting and research and studies functions and establishes a nonlapsing fund for the deposit of

such fees. The bill also authorizes the postsecondary education commission to adopt rules to establish and collect fees for direct and indirect costs associated with its degree granting authority.

SENATOR GREEN: Thank you, Mr. President. I move that House Bill 448 ought to pass. I also ask that you vote down the amendment that is listed in the calendar due to a mistake in drafting. These two bills got kind of evolved in the drafting problem. So, please vote down the amendment. Thank you. When I am finished with my remarks, Senator Bragdon will be introducing a floor amendment, which will be to amend the bill as approved by the committee. House Bill 448 authorizes the Postsecondary Education Commission to collect fees to pay for expenses related to its degree-granting and research studies functions and establishes a non-lapsing fund for the deposit of such fees. The bill also authorizes the Postsecondary Education Commission to adopt rules to establish and collect fees for direct and indirect costs associated with its degree granting authority. The Postsecondary Commission is currently charged with doing research and other services for the general public which it currently does not charge for, but often takes plenty of man hours to complete. The Education Committee unanimously supports this bill with a new amendment and hopes that you do too. Thank you.

Amendment failed.

Senator Bragdon offered a floor amendment.

Sen. Bragdon, Dist. 11

May 26, 2005
2005-1645s
04/10

Floor Amendment to HB 448-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to the collection of certain fees by the postsecondary education commission and relative to surety indemnification bonds.

Amend the bill by inserting after section 2 the following and renumbering the original section 3 to read as 5:

3 Postsecondary Education Commission; Surety Indemnification.
 Amend RSA 188-D:20-a to read as follows:

188-D:20-a Surety **Indemnification** [~~Bond~~]. Before a license is issued or renewed, a school shall meet the requirements of this section or RSA 188-D:20-b, **by providing acceptable surety indemnification** as determined by the postsecondary education commission.

I. A surety bond shall be provided by the school in an amount prescribed by the postsecondary education commission. The obligation of the bond is that the school, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the school and entity enrolling as students. The bond shall be issued by a company authorized to do business in the state of New Hampshire. The bond shall be issued in the name of the postsecondary education commission, and is to be used only for payment of a refund of tuition and instructional fees due to a student or potential student, and the expense of investigating and processing the claims.

II. The amount of such bond shall be based on income from tuition at 10 percent of gross tuition, with a \$10,000 minimum. If a school

licensed under RSA 188-D:20 should fail to provide the services required in a contract with any entity, as determined by a court of competent jurisdiction, the bond shall be forfeited, and the proceeds distributed by the postsecondary education commission in such manner as justice and the circumstances require.

III. The bond company may not be relieved of liability on the bond unless it gives the school and the postsecondary education commission 90 days written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the school's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the postsecondary education commission.

IV. For the purposes of this section the forms of indemnification other than a surety bond which may be furnished to the postsecondary education commission for licensure are the following:

(a) An irrevocable letter of credit, maintained for the licensing period as a minimum, issued by a financial institution authorized to do business in New Hampshire in an amount to be determined by the postsecondary commission with the postsecondary education commission designated as the beneficiary; or

(b) A term deposit account held in a financial institution authorized to do business in New Hampshire, payable to the postsecondary education commission, shall be held in trust for the benefit of students entitled thereto under this section. Said account shall be maintained for the licensing period as a minimum, in an amount determined by the postsecondary education commission. All interest shall be paid annually to the appropriate school, unless the term deposit account is activated due to a school closing. Should the licensee for any reason, while not in default, discontinue operation, all moneys on deposit, including interest, shall be released to the appropriate school subject to the approval of the postsecondary education commission.

4 New Paragraph; Postsecondary Education Commission; Rulemaking. Amend RSA 188-D:8-a by inserting after paragraph V the following new paragraph:

VI. The establishment and collection of fees for direct and indirect costs associated with in-state and out-of-state visits, reviews, and requests from institutions related to the degree-granting authority of the postsecondary education commission.

2005-1645s

AMENDED ANALYSIS

This bill:

I. Authorizes the postsecondary education commission to collect fees to pay for expenses related to its degree-granting and research and studies functions and establishes a nonlapsing fund for the deposit of such fees.

II. Specifies acceptable forms of surety indemnification before the postsecondary education commission issues or renews a license.

SENATOR BRAGDON: Thank you, Mr. President. They got that one right. I'd like to introduce floor amendment 1645 to House Bill 448. I move adoption. As I mentioned in my prior remarks, 248 and 448 were somehow combined in the calendar. This is the amendment to which Senator Green just spoke. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 721, prohibiting the department of education and the state board of education from adopting a definition of an adequate education. Education Committee. Inexpedient to legislate, Vote 6-0. Senator Estabrook for the committee.

SENATOR ESTABROOK: Thank you, Mr. President. I move HB 721 inexpedient to legislate. HB 721 would prohibit the Department of Education and the State Board of Education from proposing or adopting rules which define an adequate education. Since this is already beyond the scope of the department's authority, such language is unnecessary. The bill would further require that any changes to the standards for school approval made through JLCAR, be adopted in legislation within a year's time. This would create a new legislative process, another provision which failed to gain support. The Education Committee unanimously supports the motion of ITL, a motion also supported in the end by the bill's sponsors. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

MOTION TO REMOVE FROM THE TABLE

Senator Bragdon moved to have HB 132 removed from the table.

Adopted.

HB 132, relative to grounds for dismissal of a teacher.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 132 ought to pass with amendment. HB 132 enhances local control of public schools by changing the grounds for dismissal of a teacher from simply "immoral or incompetent" to "immoral or not satisfactorily maintaining the competency standards established by the school district." With HB 132, local school boards can more freely establish competency standards tailored to the needs of their communities and hold their staff members accountable to those standards. The Education Committee asks for your support of the ought to pass with amendment motion. Thank you.

SENATOR FOSTER: In committee I opposed the bill and, although we don't have our reports in front of us, you will see that the vote was 4-2. But, as the amendment, assuming we pass the amendment, although I don't see the need for the legislation, I think the amendment is fine and I can support it as it would be amended.

SENATOR ESTABROOK: Thank you, Mr. President. As the other member of the Education Committee who voted against this bill in committee and against the committee amendment, I rise to just explain that, in talking with folks and fully understanding the ramifications of the language that the committee has adopted, I'm comfortable with supporting it at this point, although I do remain concerned about negotiations in the future. Thank you.

The question is on the adoption of the committee amendment (1379).

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 602-FN-A, relative to the unbundling of communications services for purposes of the application of the communications services tax. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-1. Senator Burling for the committee.

Energy and Economic Development

May 18, 2005

2005-1475s

09/04

Amendment to HB 602-FN-A

Amend RSA 82-A:2, V(e) as inserted by section 1 of the bill by replacing it with the following:

(e) Charges for services which are not provided in connection with originating or receiving communications services and which are not necessary for or directly related to the provision of communications services, to the extent that the charges for such services are disaggregated and separately identified from other charges on the customer's bill. ***In instances where the retailer does not separately list charges for taxable and non-taxable communications services, such charges shall be subject to the taxes imposed by this chapter, unless the retailer can reasonably identify charges not subject to such tax from its books and records kept in the ordinary course of business and provide verifiable data as to the calculation of the tax to the department upon request. A retailer calculating the tax on the basis of its books and records shall provide the taxpayer with an explanation of the calculation of the tax upon request.***

2005-1475s

AMENDED ANALYSIS

This bill permits the exclusion of nontaxable components of bundled communications services packages from the communications services tax if the retailer can identify the charges not subject to the tax from its books and records kept in the ordinary course of business and provide verifiable data as to the calculation of the tax upon request.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move House Bill 602 ought to pass with amendment. House Bill 602 addresses the taxation of bundled services. Now telephone companies don't, as we all know, in the current market, don't offer just phone services, they offer all kinds of services, which the industry forces them or encourages them to bundle together. Only direct services in telecommunications are subject to our telecommunications tax. So the question came up, how to unbundle so that we can fairly apply the tax to taxable services. I would say, by way of background, the committee dealt with an original bill that answered the question I'd always ask, what would actually happen if you sat a monkey down at a typewriter and asked him to write Hamlet? A sentence came out which was utterly indecipherable by any adult in the room. The chairman of the committee pulled a huge miracle out of a hat and came up with a sentence we could all understand, and that is the basis for our amendment today. I would encourage you, please, to join us in ought to pass with amendment.

SENATOR BOYCE: I rise just briefly. I was the one vote against this in committee. My reason for voting against in the committee was that it doesn't do what I felt the intention was, which is to relieve the taxpayer of the obligation of paying a tax that is not supposed to be imposed - the tax on the internet service. While this does make it possible for a sup-

plier of those services to make it possible to exclude the non...the non-taxable portion from the tax, it does not give any incentive to the supplier of those services to do so. And, in a case where there is no competition between suppliers, there will be no incentive to allow the taxpayer to not pay this tax which is not due. I've contended all along that we should not be taxing the internet in any way, shape or form because that is what the federal government said in their moratorium on the internet tax several years ago and it has been reenacted several times. The latest version says that we won't be able to collect this tax on the internet at all, notwithstanding this bill in either, I think it's next October, not this coming October, but the year after. So it is something that is coming. We will have to deal with it again. This does not solve the problem for the taxpayer. It solves the problem for the companies that want to be able to not tax their customers and not give an itemized bill showing their competitor how much they think is their cost of doing this part of their business. So while it does do some things that are intended, it does not do all that I expected and intended. I will vote for it, but I just wanted to explain why there was one against, out of committee. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak in favor of the bill. Senator Boyce made some very interesting comments and many of them are exactly true. Remember that when we passed our communications tax in 1990, that was before the internet. So under the evolution that takes place in technology, the internet comes into play, and we had a methodology of taxation that, because of the grandfathering statute, was okay. That's all going to change. This is one step that has to be taken in order to facilitate what we do going forward with regard to the way we tax communications. It is an important step, because "unbundling" means that you can identify which service you are purchasing. That part of your purchase that is not taxable, will not be taxed. And that's the intent as we move forward. The grandfathering of our methodology of taxation expires in two years. It may expire even before that. There is a piece of legislation currently in the Congress of the United States to eliminate the grandfathering a year sooner than the original Committee of Conference report. But, this is a step that we had to take. It is the right step as far as the unbundling and the identifying of the services concerned, and we, as a legislature, are going to have to deal with this as we go forward, because it is a very significant part of our revenue stream that is going to be disrupted. I think, if you have read the fiscal note, recognized the fact that that disruption could cost us about \$8.5 million a year. So we've got to do this to start, and then we have to move forward. Thank you, Mr. President.

SENATOR GREEN: I find myself sometimes in the opposition of committee reports and it makes me wonder whether I think properly or not. But I will tell you that I do. I am opposed to the committee report. Let me tell you why. This is the same issue that we are dealing with all the time. I had a bill in here, as you know, an amendment to a bill that had to do with doing away with the internet tax completely. Let me tell you why that amendment was in here. I know it involves \$8.5 million a year so I am concerned about the revenue. That's not...I am not blind to that. Two things have happened, in my opinion. First of all, I do not believe the state of New Hampshire ever had the authority to tax the industry. I think they have done it and nobody has been willing to take them to court and challenge them, but they did it. And as long as nobody challenges you, you will continue to do it. I think the DRA was absolutely

wrong in doing that. I don't think they had the authority. But having said that, they are doing it. I'm talking about taking advantage of the grandfathering clause. What we are doing here was part of the big picture last year when we were dealing with other issues around taxing the internet, taxing other assets, and deciding whether or not, in fact, we were doing the right thing on behalf of the people of the state of New Hampshire. Let me talk about this unbundling issue. It is an issue that resolves itself because DRA has been trying since they've been taking advantage of this grandfather clause, to figure out how they decide which services are taxable and which are not. The problem you have is the big companies have it all figured out. They've got the ability to do it, and they've got the resources to do it, because it takes an effort and a cost to do this. What you are doing is you're doing the work of the big companies of putting out the small companies out of business, because the small companies have a very difficult time in separating out their bills. So what does DRA do? The rule is this. If you don't separate out your bill, you pay for all the service. So you pay for all of it or you separate out. Now there is some injustice in there as far as I'm concerned. I think the idea of unbundling will not go away when we get rid of the internet tax. There will still be the issue of other services that are taxable and how you divide it out. One of the problems with this communications service tax is that very issue. What do they have the authority to do? What do we need to do to clean up the language in that tax in order to make it work, not only for the big companies who have the influence, but the small people who are trying to make a living competing with the large companies? We are hurting the small business people by doing this piece of legislation. If this passes, it will come back to haunt us. We will hear about it. We've heard a lot about it since I have been here this time. It's been an amazing issue. I also would like to, just for the record, so that it gets clear, I think it's important that we, in this Senate, at least have all the facts when we deal with this. For the record, the phone companies do not pay the communications service tax. Can I make that clear on the record among us? They do not pay the communications tax. I read some interesting testimony in yesterday's debate in the House, where we don't want to tax the telecommunications company twice, 'cause we don't want to tax them for them communications tax and other taxes. I think this is a pole tax, but you know, I am going to say it. The point is that they do not pay the communications service tax. You are not taxing anybody twice. You do this, you are taxing all companies for more than just the internet tax. You're charging them for all services, because they do not have the ability or the time, or the money, to break open their bills and decide how to unbundle it. I think the concept is wonderful, but in practice, it does not make any sense to do that on the part of the Senate. So you know, I made my points. I hope that you have been listening. Thank you.

SENATOR BURLING: Senator Green, I'd like to make an assertion and ask your comment on it because we did consider some of what you have just described.

SENATOR GREEN: I am sure you did.

SENATOR BURLING: There was an examination of the large and small company representatives in the room, and I believe I asked the question, "What's so exciting about the bundling?" Is it not the fact, Senator, that what drives this is not what we do in trying to determine tax policy, but

what the market does as companies compete to bundle services which they can then sell to the public? Isn't it really a market problem that you're describing, not a tax problem that we are imposing?

SENATOR GREEN: You're partly right in my opinion. Second of all...

SENATOR BURLING: I've heard that said many times.

SENATOR GREEN: Yeah, "partly right". The tax policy we're developing here continues the ability of DRA to say that, in the statutes now, they are going to legalize what they have been doing up to now without any statutory authority. That has been that they have gone to the small businesses and said, "If you can't break out your services and unbundle them, we're going to charge you for the whole thing." That's tax policy. That's the part that I object to on the policy level. Okay? Thank you.

SENATOR ODELL: Thank you, Mr. President. Senator Green, I appreciate your comments. No, just going to make a comment. I appreciate your comments. We did hear from small companies that were there, and, as Senator Burling said, this was about competition. I don't think that any of us on the committee thought in terms of this being a tax policy decision. It was more or less transparency and that the companies would have to be able to break that out. We heard no testimony that any of the small, very small telephone companies, wouldn't be able to comply with this. The example that was used in terms of the marketing side was if you took one of the grand hotels in the north country, and they package up a plan for a weekend trip, that the room and meals tax would apply to the room and the meals, but some of the other amenities that would be included in the package would not come under that, and yet, from a consumer's standpoint, you wouldn't know what was being taxed and what wasn't being taxed. I think this was more of a full disclosure in making information available to the consumer as well as making sure that they are in compliance with what they've told DRA. So we didn't, at least in my thought process, never considered this part of a tax policy. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 59-FN-L, relative to municipal responsibility for septage disposal. Environment and Wildlife Committee. Ought to pass, Vote 4-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 59 ought to pass. House Bill 59 simply clarifies the language of RSA 485-A:5-b to a clearer definition of what is meant by the phrase "shall provide or access to" a DES approved facility by written agreement to the town with alternative options to accept septage from that municipality for a period of five years. The Environmental and Wildlife Committee unanimously asks your support of ought to pass. Thank you very much.

Adopted.

Ordered to third reading.

HB 306, relative to mandatory education for crossbow hunters. Environment and Wildlife Committee. Inexpedient to legislate, Vote 4-0. Senator Johnson for the committee.

SENATOR JOHNSON: Thank you, Mr. President. I move House Bill 306 be found inexpedient to legislate. House Bill 306 would require a person to complete a crossbow education program before being issued a crossbow permit. The committee found little or no problem with crossbow safety and would only create costs for instruction, material, and administration. Proposed instruction...proper instruction is already taking place under the hunting license permit. The Environment and Wildlife Committee asks your support for the motion of inexpedient to legislate. Thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SPECIAL ORDER

Senator Eaton moved that without objection, we Special Order the following Bill(s) to Thursday, June 2, 2005.

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses.

There being no objection, HB 491 is Special Ordered to Thursday, June 2, 2005.

HB 562, relative to eliminating certain mercury-added products. Environment and Wildlife Committee. Inexpedient to legislate, Vote 4-1. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 562 be found inexpedient to legislate. House Bill 562 prohibits the sale of certain mercury-added products. It was found that the mercury levels in our lakes and streams are miniscule. Therefore, the committee voted inexpedient to legislate and would appreciate the full body's support.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the inexpedient to legislate recommendation. I was the one committee member who voted against it. This bill does what every other New England state is in the process of doing through its own legislation or statute. It simply says that, if there are commercially available and reasonable alternatives to mercury containing products, they need to be used and the mercury containing products need to be phased out. I live in a section of New Hampshire, the southeastern section which is a mercury hotspot. We have a significant mercury problem in this state, and mercury is a real issue. It causes real long-term health effects, which not only affect the lives of our children and our adults, but also raises our taxes in terms of Medicaid costs and in special education costs. The only businesses to appear to oppose this bill came to talk about their concerns about the impact it would have on their business, concerns that are understandable, but given the language of the statute or the bill, are addressed. There is a phase-in process here that will gradually have the ban imposed, and there is a large exemption here for public safety and public health purposes. If a business believes that it cannot, without mercury, provide the same quality for public health or public safety services...purposes, then that product is exempted. So I think it...the bill did in fact address business concerns. I also note the businesses in this state pay taxes. Business people have children. They care about their schools. They care about their children. They care about Medicaid costs,

and this bill is a very sensible way to add to the other efforts we are making to contain mercury and try to do away with some of the harm, just as we did with lead fifty years ago. At first, everybody said it was going to be impossible to do without lead, and we in fact, do without lead quite well today, and we have learned that we did the right thing when we reduced and eliminated lead. I also finally will note, that we will be the only New England state without this kind of ban in place, which means that by default, we become a dumping ground for these mercury products in New Hampshire, a state that already has several mercury hot spots that already has some real issues to deal with here, and I think this was very commonsense legislation that balanced that needs of business with the needs of the environment and the needs of public health well, and I hope that people will vote against the ITL and vote...and then do an ought to pass. Thank you so much.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in opposition of the committee report of inexpedient to legislate, and I also rise as a co-sponsor of House Bill 562. I signed on as a co-sponsor to this legislation because I know, and I believe that we all know, that mercury has been recognized as a highly potent, neurological, reproductive and developmental toxin, and that our rivers and streams in New Hampshire are some of the most polluted rivers and streams in New England with regard to mercury. So polluted in fact, that we have warned pregnant women not to consume fish that have come from those rivers and streams. This bill is only one of many initiatives to try to address the mercury toxin problem. It is an easy bill, I believe, that we could support because it will reduce mercury. It is just one of many initiatives out there. It should be passed. As Senator Hassan has pointed out, we are seeing our other New England states adopt comparable legislation recognizing that they too, have a mercury toxin problem, and that it has been put forth in such a way that it provides adequate exemptions for those products that contain mercury for which there are no reasonable or safe alternatives. It should not hurt our businesses because of that exemption. If they feel that there are no alternatives, they can receive that exemption. And I ask all of you here today, if you really care about protecting the health of our children and our children to be born in this state, to overturn the committee report of ITL and adopt this limited initiative that will begin along with other steps to reduce mercury in our rivers and our streams. Thank you.

SENATOR BARNES: Thank you, Mr. President. I heard lead mentioned a little earlier by Senator Hassan. I don't know whether Senator Hassan realizes or not, but we have a state Senator sitting in this chamber who put the lead sinker bill in and fought like heck for that for a number of years. That's Senator Johnson who is the chairman of our Environmental Committee. We need to applaud him for that. I also want to remind this chamber that oh, probably six weeks ago, I am not too good on dates and numbers, but the Environmental Committee passed a bill, and I believe it was unanimous, or maybe 5-1, to send a mercury bill out of this chamber, which came out of this chamber, I believe maybe it was a 14-10 vote or something like that, and sent it to the House. Guess what? It's still sitting over there. Okay? Now, on this piece of legislation, I don't deny the fact that mercury is a problem. And Senator Hassan and I talked a little bit about this that day, and I didn't want to offend her, and I don't intend to offend her now, because I know she feels as strongly as I do about the issue that I brought up. I want that perfectly understood. The

issue I'm going to bring up is that I received a phone call from an outfit in this state, yes it's a business, that is a defense contractor. The mercury product is made in Lexington, Massachusetts, and it is shipped to Nashua, New Hampshire to be installed. Some of that equipment right now is in Afghanistan and Iraq protecting our troops. And the heck with it right now. I am for protecting our troops as everybody else in this chamber is. Nobody's against that. Please don't misunderstand what I am saying. But I think that we have tried hard, and we will continue to try hard on the mercury. We will see what the House...maybe somebody will shake it loose over there and we will take care of these things. But, for the sake of security in this country, I'm voting for this darn thing to be inexpedient to legislate because I think it could possibly hurt some of our troops. We have a Senator in here who has a son over there now. So how in the world is he going to vote for something that could affect his son or somebody else's son or daughter? With that, I will sit down and say please kick this thing out and do we want to play with this mercury, let's play with the one they have over in the House and make them do something with it so we can do something good for the state. And I do agree that mercury is a problem, there is no question. Big red spot right in the area where my grandchildren swim. We saw that map. So I don't doubt that. This particular legislation, please let's scratch it and move on.

SENATOR JOHNSON: Thank you, Mr. President. I just want to address a couple of issues if I may. The first issue is we are talking about mercury-added products. We are not talking about what's coming out of a stack, number one. Number two, addressing Senator Hassan's comments about testimony, I think I shared with the rest of the committee members that many people could not be at the hearings because they were in other parts of the state testifying on the same issue. But I did get them to send written testimony and I think I shared that with all of the committee members. I sent copies to all of the committee members. I just want to end up by saying that, if you look at the reduction of mercury in those products, they've gone from something like 2,000 tons down to 235 tons in a very short period of time. So I think the people who are producing products with small amounts of mercury are doing the job on their own and I think we should continue to be business friendly and have this bill as inexpedient to legislate. Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I ask to speak at the point of which the committee report was shared with us, simply because the committee report stated that the level of mercury in our lakes and streams was minimal. I did not want the record to contain that information which everyone here knows has been documented is incorrect. I was very happy to hear Senator Barnes state that he does acknowledge that there is a mercury problem in our lakes and streams. I am extremely concerned about it. I think that, from an economic development point of view, we are seriously mistaken if we don't address this issue as quickly as possible. I know that in the lakes in my region, you can fish, but you shouldn't eat those fish. Now that is quite a change in lifestyle. What's it going to be like ten or twenty years from now? We have a real responsibility here to keep our lakes and streams for the enjoyment of all of us and for the protection of the natural habitats they provide. So I just wanted the record to reflect that we do have a very serious problem and, whether we go with this approach or not, we should be doing everything we can to expeditiously as possible, lower the mercury levels in our lakes and streams.

SENATOR BARNES: Thank you, Mr. President. Senator, will you help me, you and I go to see the Speaker of the House and ask him to get that bill out and passed over to him to do something about the situation?

SENATOR ESTABROOK: I'd be happy to do that, Senator.

SENATOR BARNES: Thank you very much.

SENATOR BOYCE: I heard in some of the earlier comments that this bill contains an exemption process. I just want to clarify what that process is. It says that, no later than one year before the effective date of the prohibition of sale of whatever it is they want to sell, they have to apply for it, unless it's a new product that doesn't exist. So this is an existing product. One year before they...this bill makes it impossible for them to sell it, they have to already have applied for an exemption that one year before; otherwise, they are not going to get the exemption. Second, it says that the commissioner "may" grant an exemption. So it doesn't say that he has to grant the exemption, if he finds that there is a system to collect, transport and process the end products. Then it goes on to say that also he may take into consideration that the use of the product is beneficial to the environment. All of this is still "may". He "may" use this information, because he "may" grant the exemption. And finally, it says that the exemptions "may" be renewed for a term of not more than four years. So what that really says is that somebody who's selling hearing aid batteries for Senator Letourneau's ah...they "may", if they desire, put in an application one year before this becomes effective on their product, which might be 2009, I guess, and then they "may", they "might", be able to sell those batteries for four years, five years past that term. I believe that's what it says. So it is a very limited extension and a very limited exemption. We've been told that there is no alternative to making those batteries for hearing aids. There is also no alternative for fluorescent bulbs. If they knew a way to make a fluorescent bulb that did not require mercury, they'd be doing it. If they knew a way to make a battery without using mercury, they would be doing it. But, for those tiny batteries, there is not an alternative. So what we are saying is, these manufacturers of those products, would have to jump through some significant hoops to even be able to sell their products, which we're told by the Department of Environmental Services, that the major contributor to any amount of mercury in the environment today is not from mercury-added products; it is from the burning coal, the burning of fuel oil, the burning of other things with mercury in them, and that these are not the problem. The problem is the coal fired plants. Ironically, using fluorescent bulbs significantly reduces the amount of pollution, mercury pollution, that comes out of the coal fired electric power plants. So we're using fluorescent bulbs, which reduce the amount of mercury in the environment. So this would effectively make it almost impossible to sell something that would reduce the amount of mercury going into the environment. So I am opposed to this bill and I will be voting for inexpedient. Thank you.

SENATOR LARSEN: I rise as a co-sponsor of 562 to support the bill and to say that, so far, we have all recognized through our statements the risk that mercury poses and recognized that it is a neurological toxin, a developmental toxin, a reproductive toxin. What you probably don't know, which I just found out is, that I had my hair tested. Now I don't eat fresh fish. I mean I don't eat lake water fish. I rarely, maybe twice a month, eat fish from the market, and I am very aware when I buy that fish, of which ones they say not to eat. Tuna, sword fish, the bigger ones

that have more high levels of mercury. My hair test shows that I have three...level three of mercury in me. Eleven is the worst. People who also were tested that I talk to, some of the other women who were tested, told me that they were .3. So I am somewhere in the middle. I haven't had time to find out what that means. But I'm really...you know, at my age, I am not totally worried. I may have some neurological problems later on because of it, I don't know. But we're talking about the children of this state. We're talking about long-term effects. We are talking about what is raining down on our heads from coal plants, but also, what can we do as a society to reduce mercury. And one of the ways is to discourage mercury-added products. The argument that battery...button batteries wouldn't be able to be sold in this state is wrong, because on page three it does allow for an exemption of technically feasible non-mercury alternatives are not available at comparable cost. So that says that if you can show that a button battery needed for a hearing aid cannot be gotten at a reasonable cost, comparable cost, and if there are no other alternatives, then there's an exemption. But we need to be proactive. We need to begin to step up to the plate and say, for the long range health of ourselves, future generations, we are going to work as fast as possible to reduce mercury in our environment. Now we have retained the bill that would have limited...we have retained Senate Bill what was it 128 in the House. We're really good at doing delaying tactics when we don't know solutions. But we're hearing solutions do exist and certainly choosing not to encourage mercury-added products is an option to us. I think House Bill 562 makes good sense. I think future generations will look on this bill and wish, if we don't pass it that we had, and I encourage you to reconsider the inexpedient to legislate vote that you're being encouraged to take. Thank you.

SENATOR BARNES: Thank you, Mr. President. Mercury in your hair, aye?

SENATOR LARSEN: Do I glow?

SENATOR BARNES: You don't come from Seabrook, you're alright.

SENATOR LARSEN: No, but I am downwind from the Bow Power Plant.

SENATOR BARNES: Oh.

SENATOR LARSEN: Or upwind.

SENATOR BARNES: Okay. Senator, would you be willing...you're the Democratic Leader in the Senate, there are eight of you in the Senate, and there's a whole mess of you folks over in the House. Would you and Senator Estabrook and the rest of your colleagues, gather a group and those of us, including myself, who would like to go and visit the Speaker and get that retained bill out so we can move, because we did pass that? Would you be willing to gather the troops and try to set up a meeting with the Speaker so we can go in there with about 200 of us and say, "Please Mr. Speaker, will you take care of this and get it out there?"

SENATOR LARSEN: I would be willing to discuss that with the Speaker. I think that's an interesting idea. And we did hear, through the course of the House hearing, that there is some technology available that we didn't even know about in the Senate, so...

SENATOR BARNES: We heard about some of that technology during the hearings, and that's why we, in committee, a couple of months ago, passed it out to this body.

SENATOR LARSEN: I'd be happy to join anyone willing to go take that bill further.

SENATOR BARNES: Having said that, and agreeing to go with you, and I got a hunch that you'll have a lot of colleagues join you, just to get this one and get rid of it, and because of the problem that it has created and I don't want to keep pounding on a certain issue that this thing would hurt. I don't think we want to do that at this time. We all know we are at war. This is war time. War has been declared. When you go to war, sometimes certain things happen that don't happen in peace time. Right now, we're at war.

SENATOR HASSAN: Just briefly. Thank you, Mr. President. I rise a second time, first of all, to acknowledge Senator Johnson's comments. We did receive letters after the hearing, and I apologize for not mentioning that in my statements. And also to acknowledge Senator Barnes' concerns about the safety of our troops, which he and I both share. I am also quite confident that the Commissioner of DES, who this bills empowers to approve exemptions, shares the same concern for our national security and for our troops in Iraq that we all do. Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Hassan, would you believe that I believe that the Commissioner shares those concerns? But I have seen Commissioners do some strange things out there. I've got to say the only people I trust are the people in this group of twenty-four that I'm working with. I don't trust to have the Commissioners or the Governor or anybody else in this state, do something that I think is right. We'll do our work and not count of them, because sometimes they do funny things. Would you believe that?

SENATOR HASSAN: I believe you believe that, Senator. Thank you.

SENATOR BARNES: Thank you, Senator Hassan.

Committee report of inexpedient to legislate is adopted.

HB 78-FN-L, relative to state funding of regional vocational education centers. Finance Committee. Ought to pass, Vote 6-0. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 78-FN-L ought to pass. This legislation clarifies the manner in which communities are reimbursed for the renovation of regional vocational high schools in two ways. First, it clearly puts in statute that the state will pay for the renovations, as currently in rules. Second, it changes the reimbursement level to between 50 and 75 percent. The House Public Works Committee made this change to ensure that at least two centers would have the ability to be funded each budget cycle. Without this change, they felt that only the larger renovations would be funded in any given biennium. Please support the committee recommendation of ought to pass. Thank you, Mr. President.

SENATOR KENNEY: Thank you, Mr. President. I might ask a question of Senator D'Allesandro. I just want to have this etched clear in my mind. But Kennett High School communities, eight communities up in that region of the state have passed, you know, a bond for a new high school, and with that is a vocational center. Would they be under the old rules as they move forward in regard to House Bill 78 where they would by receive 75 percent for that tech center?

SENATOR D'ALLESANDRO: That's an excellent question because I would say that, if ex post facto were in place, they would be under the old rules. But, the construction of that high school has not begun yet. Has it?

SENATOR KENNEY: It has not.

SENATOR D'ALLESANDRO: So I would assume that they would be...if this...when this statute becomes law, they would be applying under the new statute. That is just my interpretation. I will check with legal counsel to find that out, but this is not law at the present time. That school is not under construction and has not applied for the aid at this time, so I think anything we do going forward, is where they would fall. That's just a kind of logical sequence I would follow. But I will check that and get back to you, Senator, 'cause I am sure that it bears a very important place in terms of how that school would be reimbursed for the vocational technical center that is going to be part of the school.

SENATOR KENNEY: Would you believe it also would affect how I vote right now?

SENATOR D'ALLESANDRO: I would believe that, but I think your positive vote would be good for your community. And having taught at Kennett High School, I would say nothing that would adversely affect the Kennett High School Eagles.

SENATOR KENNEY: Just so I can get clarification, Mr. President. If I could ask Senator Morse the same question? If he might enlighten us?

SENATOR MORSE: Senator, I don't believe you have anything to worry about. What has happened here, people that have sat on Capital Budget for a long time put this legislation in, in the House. This purely was about Nashua at the time. Nashua came in with a project that was far greater than we could ever fund under what we put in the Capital Budget every year or every two years. And I don't know, but we gave Nashua \$9 million over the last two biennium. This was to shut off anything else coming out of if Nashua believes they deserve more money. I am sure this is why the House put this in place. Your project, I believe, is in this year's capital budget and is fully funded. So I don't believe you have anything to worry about. I don't believe the rest of the state, but the fact is, you can't come in with \$20 million projects and get them funded at 75 percent when we only fund \$10 million every two years. It just won't work. That's why they put this in.

SENATOR KENNEY: Thank you, Senator Morse. I know how to vote now. Thank you.

Adopted.

Ordered to third reading.

HB 145, relative to the healthy kids corporation. Finance Committee. Ought to pass with amendment, Vote 6-1. Senator Boyce for the committee.

Senate Finance

May 18, 2005

2005-1486s

05/10

Amendment to HB 145

Amend the bill by deleting section 1 and renumbering the original sections 2-3 to read as 1-2, respectively.

2005-1486s

AMENDED ANALYSIS

This bill requires the healthy kids corporation to submit to competitive bidding the insurance products offered by the corporation.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 145 ought to pass with amendment. This legislation will clarify that Healthy Kids Corporation will go out to bid on dental and health insurance every three years. The amendment to this bill eliminates language which says that Healthy Kids Corp will be the program administrator for this program. The committee felt this language was unnecessary and that the remaining language relative to competitive bidding of dental and health insurance for the Healthy Kids Program was sufficient. The Finance Committee asks your support on the motion of ought to pass with amendment. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I want to introduce a floor amendment. That will be after we accept the committee amendment?

SENATOR EATON (In the Chair): Yes.

SENATOR D'ALLESANDRO: Thank you.

SENATOR GATSAS: Of Senator Boyce. Thank you, Mr. President. Senator, can you tell me, if I remember correctly, two years ago, we passed in the budget, that Healthy Kids would look for a quote on our self-insured health plan. Do you know if that has become any relevancy?

SENATOR BOYCE: I believe that that's in the bill as it stands. No, I believe that's in the...maybe I saw that in the budget. I've seen so much lately. But I believe there's still a footnote in the budget that suggests that they may go into the self-insurance plan. I don't believe it requires them to, but it says that they can be part of a self-insurance program. It's a footnote in the budget, so.

SENATOR GATSAS: Follow up. I am assume that Senate Finance is going to ask that question to see if they've received a bid based on the self-insurance plan that we have in place, to see if we, as a state, are getting the best rates for the Healthy Kids Program?

SENATOR BOYCE: I think we will ask that question now that you've brought it up.

SENATOR GATSAS: Thank you.

SENATOR GREEN: Senator Boyce. Thank you. Senator, I'm looking at the hearing report here. I guess I am just trying to figure out...the bill here, the way this language is, it says that the bill provides that the Healthy Kids Corporation shall be the program administrator for the expanded Children's Health Insurance Program under social security, etc. Does the amendment change what the bill originally did?

SENATOR BOYCE: The bill does remove that section, the amendment does remove that section of the bill. The bill did originally said that the corporation shall be the program administrator for the state's expanded children's health insurance program. It went further to say that any subsequent state or federal program, as determined by the legislature, to provide comprehensive self health insurance would also be covered by them. We felt that none of that was necessary to be in statute. Healthy Kids was established to be the health insurance plan so it's...we felt that language was unnecessary.

SENATOR GREEN: Follow up. So you're basically saying we're taking the administration in Healthy Kids in the current statute, and taking that program away from them and putting it out to bid?

SENATOR BOYCE: No.

SENATOR GREEN: Alright. Talk to me again.

SENATOR BOYCE: We are leaving... That part of the statute stands untouched with this amendment. As it was originally incorporated. The corporation was established by, under 126:H-2. That would not be changed at all under the committee amendment. The committee amendment only deals with the language that says that the corporation shall, at least every three years, submit to competitive bidding for the health and dental insurance.

SENATOR GREEN: Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. As a sponsor of the bill, I rise in opposition to the committee amendment. When the committee deleted the sentence that says "the corporation shall be the program administrator", that deletion is a significant one. There's been an issue for the last couple of years about the interpretation of the current statutes. To say that the current statute is sufficient in my mind, is totally incorrect. Now I do understand the committee would have a concern about the second part of that sentence in terms of the subsequent state or federal programs, and I know that we will be looking at a floor amendment that would address that problem. But, to adopt the committee amendment which also takes out the program administrator language, is only asking for future problems again in trying to interpret the current statute. Just as Senator Boyce said, we set up the Healthy Kids Corporation in statute specifically to be the program administrator. So what is the problem with restating that? Thank you.

SENATOR LARSEN: I rise to oppose the way the Finance Committee reported House Bill 145 out of committee. I think most of you in the room recognize how effective our coverage of children in New Hampshire has been through the Healthy Kids Program. The way we passed this bill out of Finance, took out, takes out all the language of the essence of House Bill 145, and leaves only language that says, "the corporation shall, at least every three years, submit to competitive bidding." That's already a footnote in the budget. So essentially, if you are not going to pass this section one of House Bill 145, there is no reason to go back in and work through again and distort and destroy language relating to the Healthy Kids Corporation. We are remarkable in this state. I believe we are somewhere in the vicinity of third best state for covering kids. The Center for Medicaid and Medicare said that using its unique status as a bridge between private and public sectors, Healthy Kids has leveraged its excellent relationship with providers and communication organizations to provide high quality benefit at an affordable price. The Healthy Kids issue was put out to bid and in fact, did win that bid. As I recall, there were no other bidders who were interested in doing this program. Ninety-four cents out of every S-Chip dollar goes to cover the health and dental insurance products. There is no issue that we ought to competitively bid the insurance products, but the administration of the Healthy Kids Program is a nonprofit administration. It's board, unlike the for-profits, who you heard of received some, sometimes as much as \$45 million in bonuses. Healthy Kids Board doesn't get bonuses. I mean, I wish I did. I mean, heck, it would be great. But this is a non-profit board. There are a lot of experts who come from around the state to serve in the best interest of providing health insurance to the kids of this state. House Bill 145 was meant to clarify that the Healthy Kids Corporation is the administrator of the Title 21 program, and it is meant to prevent the kind of turning away from its mission that requiring a bidding pro-

cess every three years, requires of the Healthy Kids Corporation. It's a creation of us. Healthy Kids was created by the legislature. You're going to hear an amendment that will correct this issue in a floor amendment to come. But if you're going to consider passing House Bill 145 as the Finance Committee passed it, I tell you it is a worthless bill and you ought to just kill it, table it, whatever. But it's not worth passing the way Finance recommended it out. Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator Larsen, I think it was made pretty specific two years ago in the budget that Healthy Kids would look at the cost on the state health insurance self-insured plan and whether there would be a savings. This legislation now says that it will go out to competitive bid and they've never looked at whether the self-insured plan is less expensive for Healthy Kids and the people of the state of New Hampshire. Can you tell me, seeing that 1) you are a Senator, and I am asking the question on the Senate floor, but 2), because you are on the Board of Directors, why wasn't that ever looked at?

SENATOR LARSEN: At the point when self-insured was being added into the budget, it was also the point when Healthy Kids was being asked to look at its contract, under its contractual relations with Anthem. I understood that the self-insurance issue was going to be brought along at the same time and looked at in concert with the self-insurance for state employees. At this point, we have a contract with Anthem and, whether the staff is reviewing self-insurance as a future contract or future way to set up, I have not heard. That doesn't mean it's not happening.

SENATOR MORSE: Thank you, Mr. President. Let me just step back on the Finance Committee to speak about Healthy Kids Corporation. It was all positive. Very positive. Everything you've said today is what we talked about and no one doubts that. Healthy Kids exist. I am sure many people in here were sponsors to make it exist in the beginning. The Finance Committee, and I wish Senator Gatsas had been there, because I'm not sure we went far enough right here. The Finance Committee specifically looked at the Corporation shall at least, every three years, submit to competitive bidding, the dental and health insurance products offered through the Corporation which receive state and federal funds. That was a very important part of this legislation, so it is not a waste. That was the important part. The paragraph above, in italics, there is problems with that. I have problems with going further and changing the original intent that was put in place, which is what you're going to see in an amendment. But Senator Gatsas brings up a point that the commissioner talked about. The state has determined a savings of \$482,000 in '04 and '05 because of the discussion that happened in the Finance Committee back in '03. Now I thought the bottom of this was what you discussed in '03 and that was the intent of the legislation. If it should be stronger and have further language, maybe we table this and put further language in here. But the fact is, this paragraph up here, in the beginning, it was meant to add duties to this group and any subsequent state or federal programs could be lumped into this, and then further, it was to tell us this is the group. Well it is the group. You didn't need legislation to do that. It almost seems like a push. So I think it is a good piece of legislation. If someone should want to put a further amendment as to what they should do to put it out to self-insurance, that's a different story and that's what I thought this was addressing, quite frankly. But anyhow. I think the Finance Committee respects this group greatly and mentioned that several times in its debate. So I don't think anything was done wrong in the Finance Committee.

SENATOR BURLING: Senator Morse, I had the privilege. I don't know how many months ago, but I was the Democratic Leader of the New Hampshire House and a crisis emerged as to how Healthy Kids was to be treated and whether or not it would be required to submit its administrative function to competitive bidding. I was in the room with several people who are now in the balcony, one of whom was a House member on the Board. I remember hearing the commissioner explain that he had the right to force the administrative function into competitive bidding. And at the time, I expressed some surprise since Healthy Kids Corporation is a specifically created legislative child. I mean, we did it. I want to know the answer to this question. If the bill, as amended by Finance passes, is there any employee of the government of the state of New Hampshire, who could claim that Healthy Kids is not the administrator under Title 21 of the Social Security Act? Is there any rational basis under which anybody, a commissioner, a deputy, an assistant deputy, or a newspaper man, could assert that Healthy Kids Corporation does not have control of the administration?

SENATOR MORSE: Senator, I don't know the answer to that. But the point being is, it's working. I am not sure what we are doing here. It hasn't failed.

SENATOR BURLING: With all due respect, Senator Morse, don't we need to know the answer to that question before we pass something that Finance reports to the floor? For many of us, the power of Healthy Kids to administer this program is a critical question.

SENATOR MORSE: I don't believe you do. I believe this was solely to tell the group that is doing something right now, you have to put it out to competitive bid. If someone wants to make it competitive bid, and include self-insurance, that's fine. I didn't get...wasn't part of that discussion two years ago, but I don't believe you have to go any further.

SENATOR ESTABROOK: Yes. Thank you. It is really the flip question of Senator Burling. If there is no need to clarify in statute that Healthy Kids is the program administrator for the states children's health insurance program, then under what authority did the Commissioner of Health and Human Services require them to apply to be the administrator? The last year, as I recall it, the Commissioner forced bidding on the administration of the Healthy Kids Program based on the statutes that existed at that point. Now, if those statutes are so clear that Healthy Kids is to be the program administrator, how could the Commissioner have done that?

SENATOR MORSE: First of all, I think the fact that the Commissioner has the ability when he's distributing funds to make people go out to competitive bid is a good thing. He stated when he was in committee that he asked the Attorney General for an opinion on this and they said he has every right to force competitive bid on anyone receiving funds. So I think that is a good thing for the state of New Hampshire. I don't think that's a bad thing. Obviously, we saved almost a half a million dollars.

TAPE CHANGE

SENATOR ESTABROOK: You're saying that if, I understand you, that we don't need this language because it's appropriate for the program administration to be put out to bid. Is that correct?

SENATOR MORSE: No, Senator. I didn't address that. I think the program that is begin run right now by Healthy Kids is doing a great job. I said that the committee acknowledged they were doing a great job. You

can tell by the vote in the committee. We lost one vote in that committee because everybody believed it was doing a great job. This was truly about making things go out to competitive bid. That's what it was about. You want to take it one step further and name them in a piece of legislation that everyone believes was well thought out years ago, and I don't believe you should be doing that.

SENATOR ESTABROOK: Thank you.

SENATOR GREEN: Yeah, he's very active on this issue I guess, by nature of his position. Alright, I am looking at the House Bill as introduced. That bill makes it clear, in my opinion, that the Healthy Kids is still the administrator. So you said that wasn't an issue. You were interested in the bidding issue. I look at that and they have the bidding is in there. So I guess there is something more going on here than I know about. Now I am not saying in your mind, but somewhere along the line here, it seems to me, as I have gone through it all and listened to the debate, the only real issue here is who is going to administer this program, because I think the House had it right. They made it clear. And they added language to make sure it was understood that they were going to be the administrator. They also provided for it going out to bid. I don't think you're having any excitement about that. I think the issue is, who's administering this program, and I would like you, based on your understanding of what went on in the Finance Committee, what's the answer to that question? Who's going to administer the program?

SENATOR MORSE: Okay, Senator. The...if they had it all right, then this line would be in there. "And any subsequent state or federal program as determined by the legislature would be added." They get that. Why did they go that far? I don't understand why they went further to put the beginning in. "The corporation shall be a program administered". I think, like you're thinking right now, what was the intent of that? The original legislation, which is everything else here, establishes New Hampshire Healthy Kids to carry on. What's not working? I don't get it. What's not working is something that you guys discovered in Finance in 2003. Is they need to learn to put it out to bid. That's it. I don't see the need for this. I see a need for it going out to bid, and we've gone and put it in law, but the Commissioner, obviously, can do that. The insurance side of it.

SENATOR GREEN: Further question. If the intent of whatever you're trying to accomplish is not to take away the administration of Healthy Kids, and put in competitive bidding, the House Bill does that. It does not create any additional problems. I would suggest that we really are debating here the administration of the program, because that was a major debate two years ago, as to who's going to administer this program. In fact, there was some amendments offered to not have them administer the program. So this is not a new issue for me. The question I am asking you, is your intent not to have the current corporation administer the program?

SENATOR MORSE: Not at all.

SENATOR GREEN: Then you don't need the amendment that you have when you have House Bill as introduced.

SENATOR MORSE: Sure I do, because there is a section in there that I don't believe the state could agree to "and any subsequent state or federal program as determined by the legislature." We didn't build this program to start doing other things with it.

SENATOR GREEN: Thank you, Senator.

SENATOR BURLING: Senator Morse, thank you.

SENATOR MORSE: You're welcome.

SENATOR BURLING: I assure you I ask this question because I am deeply concerned about what we are telling the people of New Hampshire by passing this law. You described, a few minutes ago, a series of implicit powers in the Commissioner of Health and Human Services, which I had never heard of before, and I want to make sure I understand them. Historically, we created the Healthy Kids Corporation. This legislature did. We empowered the Healthy Kids Corporation to provide certain services to take care of the health care needs of our children. Two years ago, the Commissioner asserted a right to force the administration of the Healthy Kids Corporation out to competitive bidding. If I understand what you've told us, your belief is that he has that implicit power, and that the Attorney General, then Kelly Ayotte, affirmed that implicit power. If that is correct, and if that is the state of the law, if I believe that Healthy Kids should administer the program for the foreseeable future, would I now not want to put back in exactly what you took out in Finance, the language that the corporation shall be the program administrator for the state's expanded children's health care program? Isn't that what I want in there?

SENATOR MORSE: If you're asking me, I've said "no", repeatedly, and let me go further. It wasn't just the Attorney General that said this. The Center for Medicaid and Medicare Services that a competitive bid is required of large amounts of public money. So there is two parts to the bill. The bottom part of the bill is all about good policy and the other part of the bill you established years ago to have Healthy Kids. I am not unestablishing what you did, but you're asking me to stamp something on this that I don't believe should be stamped on.

SENATOR MORSE: One final follow up and then I will drop it. Is what you want, is to take out any reference to subsequent state or federal program? Is that what's bothering you, Senator?

SENATOR MORSE: The whole paragraph bothers me, Senator.

SENATOR BURLING: The whole paragraph? The whole statement?

SENATOR MORSE: I think you established something and I am not doubting that it works, and my committee didn't doubt that it works, and I think the whole paragraph should come out.

SENATOR BURLING: Thank you, Senator.

SENATOR ESTABROOK: It's been asked, thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Actually, I have a floor amendment, but let me speak to the issue. The legislature created Healthy Kids. It is a not for profit 501 pre C corporation. It files with the charitable trust. It files all of its papers. Everybody knows everything that's going on with this corporation. We did it. Why? Because we wanted to expand health care to children. Not a bad motivation. And we said, let's let Healthy Kids do it. We have a situation where, in the last budget cycle, there was some talk about putting the administration out to bid. We did that. We found that the administration was responsible. They were doing an excellent job. They were bringing more kids on, which is what we wanted them to do. And, the dental and medical aspects were put out to bid. This bill says that will continue every three

years. Great. If self-insurance is part of the bid process, bingo, it's part of the bid process. They can be one of the bidders. But, we created this not for profit to manage the Title 21 Social Security Act programs. The last part of the line, I wanted to strike out in Finance. In Finance, when we had the discussion, I accepted, inadvertently, that the original statutory language contained the fact that they would administer the program. I went to the RSAs and found it wasn't in the statute. I want to bring it back into the statute, because we all know the program is being run well. It's being run efficiently, cost effectively, and it's doing what we want it to do, and it's a creation of the legislature. Why should we then want this administration to be bid out in the same way that we are bidding out the insurance? We asked them to do certain things, as I say. We asked them to file with the charitable trust on an annual basis. You can find out everything you want to know about the Healthy Kids Corporation by going there. I am sure that Mike DeLucia will give you all of the information that you require. I would hope that you would accept my amendment, reject the amendment, go with the floor amendment, and let's move forward because we've got a busy day and we want to get things done. If we all want to take care of kids in a proper manner, we know that it is working and it will continue to work at a good rate, because the numbers indicate that we did save money. Thank you, Mr. President.

SENATOR MORSE: Thank you, Mr. President. I can assure you that we all want to take care of kids in a proper manner. But already in current law, there is "hereby created a body politic incorporate, having a distinct, legal existence, separate from the state, and not constituting a department of state government, to be known as New Hampshire Healthy Kids Corporation to carry out the provisions of this chapter." What is it that I don't get? Because they exist. They're doing a great job, and the only thing we talked about in Finance was competitive bidding because the rest of it already exists. You're pushing the envelope on something and, if self-insurance is something I should have considered, I will be happy to offer an amendment for that because maybe that's where we should have went in Finance. There's nothing political about what the Finance Committee did. It was just good legislation we thought, and maybe it should be better legislation. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I rise a little confused. The issue that we have before us came up two years ago. Why did it come up? It was \$1.3 million of over assessment to Healthy Kids by Anthem. Now I don't know, everyone of us is a taxpayer in this state. I don't think anybody knew about that. We, as a state, I believe, spend somewhere in the vicinity of \$9 million a year on Healthy Kids. I think we make every effort, and if we could line up another 10,000 kids, Senator D'Allesandro, to get them insured, we'd do it today. But let's not forget what we're talking about. It's an important issue. Healthy Kids is trademarked by a corporation. The state of New Hampshire doesn't own it. We don't own it. It's not ours. If they leave tomorrow because they decide they don't want to do this anymore, they take the name "Healthy Kids" with them. It's gone. It doesn't belong to the state. We were told that in JLCAR. Because this came before us somewhere about eight months ago. We had this discussion there. It's a corporation that trademarks the name. Now I think they do a great job. Do I think this legislative body should have been aware of \$1.3 million in overcharges by Anthem? You bet your life I believe it. But we were never notified. We have board of directors. Did they know about it? I don't know. But there should be some reporting system to this state, when an agency, outside of this state, even though

they are for a non profit, receives \$9 million to distribute. I had an interesting conversation with the people from Anthem in my office. I said to them, "Why wouldn't you advise Healthy Kids to be self-insured?" The most inexpensive people to self-insure are children. They should absolutely be part of the state system. But no, we went out to bid. Why? I can't give you that answer, but it certainly answers that this body should have answers to. So I don't know...I don't disagree that they do a great job, but let's not forget what the legislature first originally did when they put that into play. What they wanted was expanded health care coverage for children. That's the way it first started. A name then appeared as "Healthy Kids". It was then trademarked by somebody. The trademark is not owned by the state of New Hampshire. I don't think that's right. But again, they do a great job. Let's let them continue to do it. But there is no question that this state deserves better. They should be part of that self-insured plan, because it's the most inexpensive way to insure children today. So, again, I don't know. I guess what we have before us is to say that it should be competitive bid, and for sure, they should be under the self-insurance umbrella. If it's good enough for the employees in this state, and we have found that it's less expensive, it should be good enough, and this goes back some eighteen months ago. So obviously, they've had two plans in place and nobody, nobody, has asked whether it's cheaper with the self-insured plan that we have here as a state. Thank you, Mr. President.

PARLIAMENTARY INQUIRY

SENATOR GREEN: Are we voting on the committee amendment?

SENATOR EATON (In the Chair): We are voting on the committee amendment.

SENATOR GREEN: Thank you.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Larsen.

Seconded by Senator Burling.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 9

Amendment adopted.

Senator D'Allesandro offered a floor amendment.

Sen. D'Allesandro, Dist. 20

Sen. Larsen, Dist. 15

May 26, 2005

2005-1639s

05/04

Floor Amendment to HB 145

Amend the bill by replacing all after the enacting clause with the following:

1 Healthy Kids Corporation Established; Administrator of Expanded Children's Health Insurance Program. Amend RSA 126-H:2 to read as follows:

126-H:2 Corporation Established. There is hereby created a body politic and corporate having a distinct legal existence separate from the state and not constituting a department of state government, to be known as the New Hampshire healthy kids corporation to carry out the provisions of this chapter. The corporation is hereby deemed to be a public instrumentality and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of public and essential governmental functions of the state. ***The corporation shall be the program administrator for the state's expanded children's health insurance program under Title XXI of the Social Security Act.*** The corporation shall be a private nonprofit corporation and shall have all the powers necessary to carry out the purposes of this chapter, including, but not limited to, the power to receive and accept grants, loans, or advances of funds from any public or private agency and to receive and accept from any source, contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of this chapter. Notwithstanding any other provision of law, any payments made by the corporation for insurance coverage for children under this chapter, either directly or indirectly, shall be exempt from the premium tax under RSA 400-A:32.

2 Healthy Kids Corporation; Powers and Duties; Competitive Bidding. Amend RSA 126-H:5, I(e) to read as follows:

(e) Contract with authorized insurers or any provider of health care services, in accordance with standards established by the corporation, to provide comprehensive insurance coverage and preventive health care services to participants. ***The corporation shall, at least every 3 years, submit to competitive bidding the dental and health insurance products offered through the corporation which receive state or federal funds.***

3 Effective Date. This act shall take effect 60 days after its passage.

2005-1639s

AMENDED ANALYSIS

This bill provides that the healthy kids corporation shall be the program administrator for the expanded children's health insurance program under the Social Security Act. The bill also requires that contracts for the insurance products offered by the corporation be awarded through the competitive bid process.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I would like to offer floor amendment 1639s. Thank you, Mr. President. Amendment 1639s adds one sentence to the first paragraph. It says, "The corporation shall be the program administrator for the state's expanded children's health insurance program under Title XXI of the Social Security Act." It maintains the change made in paragraph II, "The corporation shall, at least every three years, submit to competitive bidding the dental and health insurance products offered through the corporation which receive state or federal funds." I think we've had enough discussion and debate. People know the issue. The issue to me is quite clear. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. As I said earlier, I'm not sure I understand what the problem is with restating very clearly that Healthy Kids is the program administrator. I respectfully disagree with my colleague who said earlier that it's working. It's clearly not working. If it were working, the current language...in statute were working, the administration of the program would not have been forced out to bid.

It's clear to me that we need this language in order not to force the administration of the program out to bid again. By forcing the program administration out to bid, all we do is take away from their good work. So I would hope you would support this amendment and I would request a roll call.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Estabrook.

Seconded by Senator Burling.

The following Senators voted Yes: Burling, Green, Bragdon, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 10 - Nays: 14

Floor amendment failed.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 432-FN, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions. Finance Committee. Ought to pass, Vote 7-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 432 ought to pass. This bill redirects the \$10 fee added to the cost of submitting plans and specifications for sewage or waste disposal systems to support the position of a Septage Coordinator. This position was created by the legislature, but its funding source has been since been moved. DES feels this is an important position as waste disposal is becoming evermore difficult and they would like to be proactive about addressing the issue long-term. The second portion of the bill extends the grandfather status for certain designated areas and allows farmers, primarily along the Merrimack River to continue using a setback of 75 or 125 feet for designated river corridors. The Finance Committee asks your support of the motion of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 478-FN-A, making an appropriation for "Newsline for the Blind." Finance Committee. Ought to pass with amendment, Vote 7-0. Senator D'Allesandro for the committee.

Senate Finance

May 17, 2005

2005-1452s

05/10

Amendment to HB 478-FN-A

Amend the bill by replacing section 1 with the following:

1 Appropriation. The sum of \$25,000 for each year of the biennium ending June 30, 2007, is hereby appropriated to the governor's commission on disability for the purpose of funding the National Federation

of the Blind's "Newsline for the Blind," an information and news service that provides individuals who are otherwise unable to read newsprint with access to existing newspapers and other printed materials. Said funds shall be a charge against the telecommunications relay service trust fund established by the public utilities commission.

SENATOR D'ALLESANDRO: Thank you, Mr. President. Mr. President, before I begin my remarks, I want to thank specifically, our committee chair Senator Morse for his work with regard to this, and the Legislative Budget Office, which did a tremendous job to answer a very, very important need. I move House Bill 478-FN-A ought to pass. This bill, as amended, creates a dedicated funding source for Newsline for the Blind by creating a charge against the telecommunications relay service trust fund established by the Public Utilities Commission. Currently there are about 160 users of this program and it has been, for the last year, funded by Verizon Foundation. Now Newsline for the Blind is basically the only way that the blind can get in touch with the world by dialing up and getting this information via the telephone. It is a service that we had, we discontinued and then we reinstituted. Now it's going to go on in perpetuity and everyone should be commended for that. The committee received much testimony as to how this service benefits many persons with visual impairments and other disabilities on a daily basis. The program is fairly simple and it allows the caller to call in and listen to the newspaper of their choice. This service gives the blind the opportunity to become more independent and to stay active and involved in their community. The Finance Committee unanimously supports this legislation and we ask for your support. And again, our thanks to the Legislative Budget Office for the great work that they did and for the committee's due diligence in looking after that. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities. Finance Committee. Ought to pass, Vote 7-0. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 547 ought to pass. This legislation increases the cap for reimbursement to owners of on-premise-use heating oil storage tanks, which hasn't been increased since 1999. DES has consulted with several providers who all indicate they have difficulty with the cap of \$1,000 for typical storage tank system replacement. This will increase the cap, which will be re-evaluated in 2008. Please support the committee for the recommendation of ought to pass. Thank you.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 625-FN-L, authorizing borrowing from the state revolving loan fund for the Winnepesaukee River Basin project. Finance Committee. Ought to pass, Vote 7-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 625 ought to pass. This legislation authorizes the Winnepesaukee River Basin to use available funds under the State Water Pollution Control and Drinking Water Revolving Loan Fund for necessary upgrades to equipment and other wastewater projects. The revolving loan fund is capitalized by the EPA and funds are loaned to communities for projects. Funds that are repaid are placed in the account for additional loans; therefore, there is no fiscal impact to the state. Please support the committee recommendation of ought to pass. Thank you, Mr. President.

Adopted.

Ordered to third reading.

HCR 2, declaring October 27 to be Boston Red Sox Day. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

May 18, 2005

2005-1489s

04/10

Amendment to HCR 2

Amend the title of the bill by replacing it with the following:

A RESOLUTION declaring October 27, 2004 to be Boston Red Sox Day and declaring September 8, 2005 to be New England Patriots Day.

Amend the resolution by replacing all after the resolving clause with the following:

Whereas, after defeating the Anaheim Angels, the Boston Red Sox played the New York Yankees in the American League Championship series; and

Whereas, after trailing 3 games to none, the Boston Red Sox engineered the greatest comeback in the history of professional sports by defeating the New York Yankees 4 games to 3; and

Whereas, after dispatching their arch rival New York Yankees, the Boston Red Sox advanced to the 2004 World Series to play the St. Louis Cardinals; and

Whereas, the Boston Red Sox were defeated by the St. Louis Cardinals in the World Series in 1946 and 1967; and

Whereas, The Boston Red Sox exorcised their World Series ghosts by sweeping the St. Louis Cardinals 4 games to none to become the 2004 World Series champions; and

Whereas, through their World Series championship, the Boston Red Sox have ended 86 years of suffering in New England; and

Whereas, after avenging a regular season loss to the Pittsburgh Steelers, the New England Patriots defeated the Pittsburgh Steelers in the American Football Conference Championship Game; and

Whereas, the New England Patriots defeated the Philadelphia Eagles 24-21 in Super Bowl XXXIX to win their second championship in a row; and

Whereas, the New England Patriots, in the 2001, 2003, and 2004 seasons, have won 3 of the last 4 Super Bowls, and

Whereas, through their hard work, dedication, and team-first attitude, the New England Patriots have won 34 games in back-to-back championship seasons, including a record-tying 9 straight playoff games, and a record-setting 20 wins in a row at home, and

Whereas, the talents and tireless preparation of coach Bill Belichick, and the entire coaching and support staff, have resulted in excellence and superb play by the New England Patriots season after season; and

Whereas, for the outstanding example set by the New England Patriots players in demonstrating that selfless team play leads to success; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That October 27, 2004 be declared to be Boston Red Sox Day in New Hampshire and be commemorated with appropriate celebratory events; and

That September 8, 2005, be declared New England Patriots Day in New Hampshire and be commemorated with appropriate celebratory events; and

That copies of this resolution be sent by the house clerk to the Boston Red Sox organization with the request that it be prominently displayed in Fenway Park, and to the New England Patriots organization with the request that it be prominently displayed in Gillette Stadium.

2005-1489s

AMENDED ANALYSIS

This concurrent resolution declares October 27, 2004 to be Boston Red Sox Day and declares September 8, 2005 to be New England Patriots Day.

SENATOR BARNES: Thank you, Mr. President. It is with great pleasure and honor that I move House Concurrent Resolution 2 ought to pass with amendment. October 27, 2004 was a historic day that many of us devout, long-suffering Red Sox fans have waited their entire lives for. I support this bill and the resolution to commemorate the day the World Series Trophy came back to New England after an 86 year hiatus. October 27th is a day that ranks as one of the most memorable days of my life, as it is the day the chants of 1918, the images of Johnny Pesky holding the ball, and of our Senate page's great uncle, Harry the Cat Brecheen, beating our beloved Red Sox three games in that world series. Your great uncle was one heck of a pitcher, young man. The image of a slow roller though, I'm not even going to mention his name, Bucky you know who, and I am not going to be able to say that. And Aaron you know who else, home runs, and **TAPE INAUDIBLE**, most importantly the "Curse of the Bambino" were forever banished from the minds of the Fenway Faithful. In the place of these images will be the first World Series Trophy since the New York Yankees, who matter of fact, had the biggest choke in the history of major sports in America last year, 126 of them. Mr. President, it also gives me great pleasure to support the amended version of this resolution. The amendment declares September 8, 2005, and this amendment was presented by Senator Letourneau and myself to the committee. Senator Letourneau was part of this amendment, because he was a co-sponsor of the original amendment. The amendment declares September 8, 2005 to be New England Patriots Day in order to honor a team that embodies class, hard work and the team first attitude that each one of us should embrace, and we all know we do in this Senate. The Patriots have won three of the last four Super Bowls with this attitude and it is fitting we celebrate them with this resolution. The Public and Municipal Affairs Committee recommends voting ought to pass with amendment for this resolution. And I would like you, young man, if you have any relatives, to **TAPE INAUDIBLE**, Harry the Cat, to tell them that we honored him today because he was a great pitcher. Thanks for being here.

SENATOR JOHNSON: Yes, I want to follow up on Senator Barnes' congratulations to our page. I have a little history here of Harry the Cat Brecheen, known as the cat for his quick fielding movements around the mound, reached his peak of fame as a baseball pitcher in the 1946 World Series. As the St. Louis Cardinal who became the first lefthander to win three World Series Games. He won as a starter in game two, game six and was the finishing reliever in game seven against the Boston Red Sox. Brecheen pitched eleven years for the St. Louis Cardinals, one for the St. Louis Browns. He had a 133-92 win and loss record through 53. Lifetime earned run average of 2.92. It's one of the best in baseball. He won fourteen or more games in six consecutive seasons including a 20-7 record in 1948. He won four games and lost one in three World Series, and his lifetime World Series earned run average is .83 remains one of the best in baseball. So young man, you should be very, very proud of your great uncle, and I'd like to give you this.

SENATOR LETOURNEAU: I thank you, Mr. President. I rise just to say that I support this bill obviously, as a Senate sponsor of this bill, and just wanted to say that finally, for all of the Boston Red Sox and New England fans, there have been some sour and particularly from members of my family that have been Boston Red Sox fans that are no longer with us. It is a great day. Thank you.

SENATOR BURLING: I'd like to say something, just a little aside. When I was a young law student, I took contracts law from a guy named Blackjack Dawson. And Blackjack's claim to fame was that he had been the batboy for Napoleon Lajoie or Nap Lajoie, depending on how you pronounced it. He taught one of the best contracts classes ever and his set piece lecture was about being the batboy. I thought that I had met a man whose enthusiasm for baseball would never be surpassed. But I know now that wasn't true, and I would just like to say I'm a better man for knowing both enthusiasts.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 450-FN-A, extending the commission to study child support and related child custody issues and relative to hiring economists to assist in revising the child support guidelines and making an appropriation therefor. Health and Human Services Committee. Ought to pass with amendment, Vote 5-1. Senator Fuller Clark for the committee.

Health and Human Services

May 18, 2005

2005-1483s

05/04

Amendment to HB 450-FN-A

Amend the bill by replacing all after the enacting clause with the following:

1 Extension of Commission to Study Child Support and Related Child Custody Issues. The commission to study child support and related child custody issues, established in 2003, 277 (HB 310), shall be extended in order to continue studying the recommendations of its final report dated December 4, 2004, as well as any new economic data on the cost of rais-

ing children in New Hampshire, and to serve as a continuing resource to the general court and the department of health and human services in revising, if appropriate, the child support guidelines. The commission shall study the problem of how many financial "add-ons" parents can afford over and above their child support obligation and how that affects the ability to pay child support obligations. The incumbent house members of the commission shall call the meeting to reconvene the commission. Upon reconvening, the commission shall elect a chairperson and vice chairperson from among the members and shall meet with such frequency as the commission deems appropriate. A vacancy on the commission shall be filed by the original appointing authority. The commission shall submit a final report relative to implementation of its recommendations on or before December 1, 2006, as well as any new economic data on the cost of raising children, to the speaker of the house of representatives, the senate president, the governor, the house clerk, the senate clerk, and the state library.

2 Appropriation to Department of Health and Human Services; Economist. The sum of \$80,000 is hereby appropriated to the department of health and human services, for the fiscal year ending June 30, 2006, for the purpose of hiring economists to assist in revising the child support guidelines. The department also may accept any matching federal funds available for such purpose. The economists shall be qualified to assist the department and the commission to study child support and related child custody issues, established in 2003, 277 (HB 310), in developing, if appropriate, a basic cost model or similar method that will consider an equitable and affordable sharing of child support obligations and that will ensure that the best interests of the child have been taken into consideration in determining child support awards. The funds shall be in addition to any other funds appropriated to the department of health and human services. The governor is authorized to draw a warrant for said sums out of any money in the treasury not otherwise appropriated.

3 Effective Date. This act shall take effect upon its passage.

2005-1483s

AMENDED ANALYSIS

This bill extends the commission to study child support and related child custody issues established in 2003, 277.

The bill also makes an appropriation to the department of health and human services for the purpose of hiring economists to assist in revising, if appropriate, the child support guidelines.

SENATOR FULLER CLARK: Thank you, Mr. President. I move House Bill 450 ought to pass with amendment. This bill extends the commission to study child support and related child custody issues established 2003 to December 1, 2006. The bill also makes an appropriation to the Department of Health and Human Services of \$80,000 for the purpose of hiring an economist to assist in a review of child support guidelines, a review required by the federal government once every four years. The Senate Health and Human Services Committee amended the bill by removing the authority of previously elected officials who were members of the commission, not re-elected to public office, to remain members of the commission, believing that this would establish an unwise precedent regarding future legislative committees and commissions. The committee also amended the bill by charging the commission to review the impact of financial add-ons and the ability of parents to pay child

support, and inserts language that the best interests of the child will also be taken into consideration in the study. The committee recommends ought to pass with amendment on House Bill 450 and I thank you, Mr. President.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 514, establishing the New Hampshire health care quality assurance commission. Health and Human Services Committee. Ought to pass, Vote 6-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. I move House Bill 514 ought to pass. The bill establishes the New Hampshire Health Care Quality Assurance Commission to review and analyze information concerning medical errors. Errors hospitals are currently encouraged not to discuss by their respective counsel. While the bill does not close the door on litigation, House Bill 514 will allow colleagues from different hospitals to learn from their colleagues' experiences, including best practices. The bill is a practical approach to avoiding bad outcomes and the committee recommends ought to pass on House Bill 514. Excuse me, and I thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 681-FN, relative to training, quality assurance, and licensing of assisted living facilities. Health and Human Services Committee. Ought to pass with amendment, Vote 4-2. Senator Kenney for the committee.

Health and Human Services

May 19, 2005

2005-1506s

01/09

Amendment to HB 681-FN

Amend RSA 151:5-a, III as inserted by section 2 of the bill by replacing it with the following:

III. The department of health and human services may train, and shall approve, provider members of the New Hampshire Association of Residential Care Homes, the New Hampshire Health Care Association, or the Northern New England Association of Homes and Services for the Aging as trainers in a resident assessment course for those owning or working in licensed residential care facilities, so that such trained individuals can satisfactorily meet the provisions of this section.

Amend RSA 151:6-a as inserted by section 3 of the bill by replacing it with the following:

3 Annual Inspections; Waiver. Amend RSA 151:6-a to read as follows:
151:6-a Annual Inspection. The department of health and human services shall make at least one annual unannounced inspection of every facility licensed under this chapter, ***unless exempted by rules as authorized by RSA 151:9, I(b)***. For residential care facilities, defined in RSA 151:2, I(e), the inspection shall include a review of the programs and services offered in the facility to assure that the facility is in compliance with its current level of licensure, and a survey of the most recent individual resident needs determinations where such surveys are

not done under the survey and certification process for Titles XVIII and XIX of the Social Security Act, as amended, to assure that the facility and its programs and services are appropriate to the needs of the residents. Inspection results shall be provided as a written report which distinguishes between those findings that do, and those which do not, indicate a pattern of care, or which demonstrate over the period of at least 2 inspections, a trend in the care of residents or management of the facility which has the potential for adversely affecting the health of the residents. The results of this inspection and any later inspection shall be posted in a conspicuous place in the facility in the manner determined by the commissioner of the department of health and human services. The results so posted shall indicate the facilities and services inspected and the results for each such facility or service. This section shall not apply to acute care general hospitals **and critical access hospitals** when the department and the [joint committee for accreditation of hospitals] **Joint Commission on Accreditation of Healthcare Organizations** have agreed on joint inspection standards. ***If a residential care facility, as defined in RSA 151:9, VII(a)(1) or (2), has been inspected and is found to be deficiency-free for 2 consecutive years it shall be granted a one-year waiver from the provisions of this section; provided, that the facility is not the subject of a founded complaint investigation under RSA 151:6, the facility remains under the same administrator who is responsible for the day-to-day operation of the facility, and the facility remains under the same director of nursing if there is a director of nursing.***

2005-1506s

AMENDED ANALYSIS

This bill allows residential care facilities to establish proceedings for a quality assurance program. The bill authorizes the department of health and human services to provide training for persons who own or work in a residential care facility. This bill also exempts certain health care facilities from an annual unannounced inspection by the department of health and human services.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 681 ought to pass with amendment. The bill allows residential care facilities to establish proceedings for quality assurance program, and authorizes the Department of Health and Human Services to provide training for persons who own or work in residential care facilities. House Bill 681 also grants a one-year waiver from annual inspections to certain facilities when those annual inspections are duplicative. The committee amended the bill by adding a Northern New England Association of Homes and Services for the Aging to participate in the training of the training program and clarifies the definition of "residential care facility." The committee recommends ought to pass with amendment on HB 681. Thank you, Mr. President.

Amendment Adopted.

The question is on the adoption of the bill as amended.

Adopted.

Referred to the Finance Committee (Rule #26).

HB 691-FN-L, relative to the medicaid program. Health and Human Services Committee. Ought to pass, Vote 4-2. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 691 ought to pass. The bill clarifies the definition of Medicaid eligibility such that the number of those eligible will need an increase nor decrease and provides the commissioner with the authority to create an assessment tool to help people determine whether they are nursing home eligible or not. The bill also closes the loopholes that currently allow middle class people to qualify for what is supposed to be a program for low income people. In addition, House Bill 691 establishes a commission to develop a comprehensive state and mental health plan. The bill will restore Medicaid stability and the committee recommends ought to pass, and I thank you, Mr. President.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

Sen. Fuller Clark, Dist. 24

May 26, 2005

2005-1638s

03/06

Floor Amendment to HB 691-FN-LOCAL

Amend the bill by inserting after section 24 the following and renumbering the original section 25 to read as 27:

25 New Section; Public Assistance; Undue Hardship; Penalty Period; Estate Recovery. Amend RSA 167 by inserting after section 16-a the following new section:

167:16-b Undue Hardship; Penalty Period; Estate Recovery.

I. The commissioner of health and human services shall waive any penalty period of medicaid ineligibility due to a transfer of assets for less than fair market value if the penalty period will result in undue hardship. A penalty period results in undue hardship when:

(a) Application of the penalty would deprive the individual of medical care such that his or her health or his or her life would be endangered;

(b) Application of the penalty would deprive the individual of food, clothing, shelter, or other necessities of life; or

(c) The asset was transferred by an agent or authorized representative and it can be demonstrated and documented, by a licensed physician or an order of findings from a probate court, that the individual lacked the mental capacity to comprehend the disqualifying nature of the transfer.

II. The commissioner of health and human services shall waive recovery of assistance against an estate when recovery will result in undue hardship. Recovery of assistance against an estate results in undue hardship when:

(a) The estate includes real property on which a business or farm is located and:

(1) The business or farm has been in operation at the primary residence of the heir for at least 12 months preceding the death of the medicaid recipient for whom recovery is made;

(2) The business or farm produces more than 50 percent of the heir's livelihood; and

(3) The recovery of the claim would directly result in the loss of the livelihood of the heir;

(b) The estate includes income-producing property and:

(1) The heir has used his or her own personal resources for the past 12 months to maintain the income-producing property;

(2) The property produces more than 50 percent of the heir's livelihood; and

(3) The recovery of the claim would directly result in the loss of the livelihood of the heir;

(c) The estate includes only personal property and recovery by the department would directly result in the heir becoming eligible for public assistance;

(d) The surviving joint owner, trustee, or remainderman lived with the deceased medicaid recipient for at least one year on the property subject to estate recovery, the home continues to be the individual's primary residence, and the individual establishes that estate recovery would force the individual to sell the home or deprive the individual of necessities; or

(e) The surviving joint owner, trustee, or remainderman establishes that the deceased medicaid recipient contributed only minimally or not at all to the purchase of the property subject to estate recovery.

III. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, relative to the proper administration of this section. Rules shall include:

(a) The process to notify recipients that an undue hardship exception exists;

(b) A timely process for determining whether an undue hardship waiver will be granted; and

(c) A process under which an adverse determination can be appealed.

IV. For purposes of this section, "penalty period" means a period of medicaid ineligibility for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, or home or community-based services furnished under a waiver. The penalty period of ineligibility is determined in accordance with section 1917 of the Social Security Act or a federally authorized waiver of that section.

26 Public Assistance; Recovery for Assistance Furnished; Undue Hardship. Amend RSA 167:13, III(b) to read as follows:

(b) Recovery would result in an undue hardship as determined in accordance with rules adopted pursuant to RSA 541-A **or in accordance with RSA 167:16-b.**

SENATOR ESTABROOK: Thank you, Mr. President. I'd like to move floor amendment 1638s. Thank you, Mr. President. I'm usually pretty concise and brief on the Senate floor, but I'm going to ask you to indulge me a little more today because this bill is, by nature, very complex and very far-reaching. I am bringing in two floor amendments to correct what I believe are the most serious flaws in this legislation. This amendment seeks to address two provisions of the bill. The first are those provisions that change the time from which the penalty for a transfer of assets is applied. Current law applies the penalty from the time of transfer. Let's make this concrete. So, if I give my grandchild \$10,000 for college when I am in age-appropriate fine health, and then have a stroke and need care six months later, I will be penalized by a period of one month of ineligibility for Medicaid nursing for each \$5,000 I gifted. So it will be two months from the time of the transfer that I am ineligible. Since six months has passed, I will be able to get care when my other assets are exhausted. The change made in HB 691 is to penalize me from the time I become eligible, not from the time of transfer. So in the example that I've cited, I divest myself of nearly all of my assets to become eligible. I private pay for the interim. And then, when impoverished, become eligible. But now the penalty kicks in and, for two months, I will not be eligible for services. Where am I to go? What is the hospital or the nursing home to do with me? Section one of the amendment addresses these all too real situations which will develop if you pass this bill unamended.

Line 6-17 of this amendment provide an exemption from imposition of the penalty period upon eligibility if the health and welfare of the individual were in jeopardy. This is in keeping with the federal intent. And the remainder of the exemption is in keeping with the state's current rule regarding mental capacity. We should not discourage seniors from gifting a contribution towards the new roof of their church, synagogue or mosque or from contributing towards the healthcare, long-term care, or education of their children and grandchildren by creating new fears of being left without options. Section two of the amendment creates an exemption from what I believe is the second most potentially harmful provision of HB 691. It's asset recovery changes. Provisions in the bill expand the range of assets sought for recovery of care expenses to those outside of the probate process. What this means is that life estates and joint tenancies with rights of survivorship would be subject to state recovery in any circumstances regardless of when they were created. We already bestow surviving spouses and dependent or disabled children with these rights, those outlined in section two. In fact, current law also protects the surviving spouse from recovery of probate assets until after his or her death. But under 691 unamended, consider the fight of siblings, cohabitating elders, or closest friends with whom you might arrange to live and support each other through old age, being left without options as a result of the changes we consider today, changes which create significant differences in the law's treatment of different classes of heirs. Section three of the amendment simply gives HHS rulemaking authority over implementation issues required by federal law. Very real lives are affected by the decisions we make here today. I hope you will seriously consider the implications of passage of an unamended HB 691 and, despite any other proposals to address its flaws, or any promises that things will be taken care of later, support this vital amendment as the minimal policy change we should make to this bill to address these critical issues. And I ask for a roll call on the amendment.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Estabrook.

Seconded by Senator Larsen.

The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 8 - Nays: 16

Floor amendment failed.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

Sen. Fuller Clark, Dist. 24

May 25, 2005

2005-1596s

03/10

Floor Amendment to HB 691-FN-LOCAL

Amend RSA 167:4, IV(c)-(e) as inserted by section 5 of the bill by deleting RSA 167:4, IV(d) and renumbering the original RSA 167:4, IV(e) to read as RSA 167:4, IV(d).

SENATOR ESTABROOK: Thank you, Mr. President. I'd like to move floor amendment 1596s and speak to my motion. This amendment deletes section five of the bill, the section giving an exemption from asset recovery to those who purchase a specified type of expensive long-term care insurance. This is the provision that I find most offensive and unfair. It is a long-term care insurance trap for the unwary and blatantly discriminates against people with disabilities, low and moderate income people, older people and people with pre-existing health conditions who are not able to purchase long-term care insurance. Under this section, the wealthy can shelter limitless assets for the cost of a long-term care policy. And while, for the wealthy, the cost may be diminutive, for the average healthy couple of 70, who would need to shell out between \$10 and \$20,000 per year for such coverage, this is simply not doable. I hope you will agree, as even the bill's prime sponsor testified on the floor of the House on the day of passage, that this section is poor public policy. I hope you will support the floor amendment to delete section five.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Burling.

Seconded by Senator Estabrook.

The following Senators voted Yes: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 8 - Nays: 16

Floor amendment failed.

SENATOR BURLING: On the main bill? Do we know of any other amendments coming forward?

SENATOR EATON (In the Chair): You can just speak anyway.

SENATOR BURLING: Thank you. I rise in opposition to the passage of 691 and I want to, just for a minute, try to get everybody in this room to think about who it is that we represent. We pride ourselves on representing ordinary citizens, the men and women of New Hampshire. The people who run a small business or have a small farm, or provide a small service. What we are about to do if this bill passes, is mess with their lives. We are going to befuddle their planning for the period in which, from maybe 65 on to the end of their lives, they have to try to figure out what the fates hold in store for them, and how they can protect themselves. I don't do it anymore, but I spent fifteen years as a small town lawyer, and every one of my clients was a small business person or a small town, you know, farmer. They ran the fruit stands. What they wanted to know is what can I do to protect myself so that my assets go to my heirs and my spouse is, if he or she survives me, is taken care of? That is tough enough with mere mortality to deal with. But we are inserting the wrecking ball. Passage of this kind of legislation will make everybody we say we care about try to figure out what's going to happen if a stroke or a heart attack or an automobile accident or any one of the other vagaries that life holds in store for us, interrupts their estate plan and makes a shambles of their retirement years. If you look at the actual application of what's in this bill, you will see that people will have to plan in a way, and for, you know, possibilities, that they have

never had to think about before. One of my favorite figures in New Hampshire history is an Episcopal priest, who showed up in New Hampshire in 1811 and he was sent out to the west country by the diocese of New Hampshire to evict people from the properties of the church which had been largely taken over by squatters. He was an amazing figure. He rode a big brown horse and he wore a black vestment and he went from lot to lot and glee blocked, you know, SPG lot and he evicted people. A figure like that is about to be inserted into the lives of our retirement community. That figure is going to be the specter of somebody coming after your assets. It's a mistake. We shouldn't do it. We certainly shouldn't do it if we don't know what the consequences are. More than that, we shouldn't do it since the feds don't require it. This is not in consideration of the needs of our constituents. This is a game being played someplace else for the interests of some other people. I beg you not to do this.

PARLIAMENTARY INQUIRY

SENATOR GREEN: This has an FN on it, you intend that to go to Finance?

SENATOR EATON (In the Chair): It is not intended to go to Finance because it is revenue producing not revenue taking.

SENATOR GREEN: That was not your understanding?

SENATOR EATON (In the Chair): That's correct.

MOTION TO TABLE

Senator Green moved to have HB 691-FN-L laid on the table.

The question is on the motion to table.

A division was requested.

Yeas: 10 - Nays: 13

Motion to lay on the table failed.

SENATOR ESTABROOK: Thank you, Mr. President. Obviously I'm rising to speak against the bill as a whole. This bill is extremely disturbing and, as Senator Burling said, a disservice to our constituents. What's really disturbing to me is the process that this bill's gone through, including what's happened on the floor here today. The bill was brought into the Health and Human Services Committee, heard and voted on in one day. There was not even a pretense of the committee trying to improve the policy in this bill. And what I am seeing on the floor here today is also simply a screen of unwillingness to examine the policy that we are passing here today. We are not fulfilling our obligations in the offices we hold with regard to this bill. Not only does it have the problems that my floor amendments tried to address which, without hardship exemptions are going to exact, real hardships on people! The bill has a host of other problems. It relies on federal waivers that have yet to be granted to any state and changes our law before we get that waiver so that we now have in law something the feds won't allow us to do, and in essence, have no law. We have not grandfathered existing life estates and joint tenancies. So two elderly people who have an arrangement to share their home and let the survivor live in it won't be able to do that even if they made that arrangement years ago! It is outrageous. And what really upsets me is the fact that this is all being done so quickly and so politically. I would hope you would reconsider, table the bill or ITL the bill. It is not worthy of passage from the Senate.

SENATOR MARTEL: Thank you very much, Mr. President. I have a lot of respect for Senator Estabrook, and she had every right to bring those amendments to the floor here in the Senate today. These amendments failed in committee. They failed again today. This bill finally gets a handle on the runaway Medicaid expenses that we have, not only here in the state, but also nationally. It begins that process. This is not something that hasn't been looked at for a period of time. It has. Now, I agree that the bill came to us, one day, on the last day of...excuse me, the last day that we were supposed to deal with it, and we execed it that same day. I also knew that there were certain things in there that would become controversial, and we tried to address those. But when I look at how very simple this very bill is, with this very direct and the message from the Department of Health and Services heard as we traveled, and as they traveled around state last summer, listening to residents of New Hampshire themselves, tell us that we could improve Medicaid. And that message was to allow more seniors to stay in their homes in communities, who now must go to nursing homes. That was verified by a poll that was done by the AARP. Bill Hamilton came to see me regarding this bill and said that they had done this poll and that they were in agreement with the bill. Now he represents a lot of the senior citizens in this state. Now what does this not do? The bill does not allow those who now reside in the middle class to get Medicaid, reimbursement of Medicaid funds. They shouldn't because Medicaid is designed for the poor, those who need it the most. So why would we be upset about the fact that we are going to finally get something in process that gives the need and helps the need of the poor? There is a long-term Medicaid issue in this bill as well, dealing with nursing homes themselves. I distinctly had the representatives of nursing homes in my office on three different occasions and discussed this bill at length with them. They had no issues with the bill. They had some questions and we were able to address those questions. The commissioner came over three different times with Richard Kellogg and Lisa Brit and John Wallace and Ray Moore, and we all discussed this at length. Then we talked about the problems that were visible in this bill to certain people. Those were addressed and taken care of. Now this bill is now finally on its way to helping people who need it the most. Do I like it all? No. I don't like it all myself. And we did the best we could with this bill with the time element that we had. I, for one, thought this bill was going to Finance, but it's not. Some people suggest that the current member of seniors in nursing homes can't go down, can't go down and everyone who would be sent to a nursing home absolutely needed to go there. Well I strongly disagree with that and this issue of bringing people back home, is the backbone to this Medicaid reimburse...Medicaid Re-Enhancement Act that we are looking at, 691. We have to tackle this problem folks, because it is a major issue that we have in this state that is really hurting us badly. I could go on, Mr. President, for a while longer, but we have a long day and I won't go any farther on this unless there are questions. But I ask you to please pass this bill and not to table this bill. It is the right thing to do. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. Thank you, Senator Martel. I'd just like you to clarify the statements that you just made about Bill Hamilton and the AARP. I agree with your understanding that the AARP and its lobbyist Bill Hamilton of course are in favor of increasing options for home and community based care, which is part of what you said. No doubt about it. I don't think there is a person in this room that opposes that. However, you also said that the organization supports

this bill. My conversations with representatives of the organization would certainly not support that. I would like to know on what basis you made that statement., whether in fact, you've had any very recent conversations with the organization, whether in fact, the organization has not expressed to you as it had to me, its support for amending the bill?

SENATOR MARTEL: Is that all one question?

SENATOR ESTABROOK: Yes.

SENATOR MARTEL: Alright. I will take it one step at a time. My discussion was with Bill Hamilton on two different occasions. The last occasion that we spoke was last week. He informed me that the organization, AARP, was supporting this bill and had only an issue that it was addressing. It wanted to see what we could do, and that was in section 12. That was the only item that he disagreed with. He also told me that they polled and they did that poll within the organization. They polled senior citizens. That included, okay, from their organization, they did this poll. Now, that's where I got this information.

SENATOR ESTABROOK: Thank you, Senator Martel. Yes, I understand and I agree. They did a poll and the poll revealed that the membership supported increased options for home and community based care. My understanding is that the poll did not ask the membership whether they supported this bill. And I guess I am going to just say although I often do not like to phrase questions this way, would you believe I spoke with Mr. Hamilton yesterday and he expressed to me the organization's grave concerns over this bill?

SENATOR MARTEL: Well, I can't say that you didn't speak to Mr. Hamilton yesterday, and I can't say that he didn't say that to you. If he did say that to you, that's not what he told me, and that's not the impression he gave me about the AARP.

SENATOR ESTABROOK: Thank you. I just wanted the record to reflect both points.

SENATOR MARTEL: So I will speak with Mr. Hamilton to find out exactly what the issue is here.

SENATOR ESTABROOK: Thank you.

SENATOR LETOURNEAU: Thank you. Senator Martel.

SENATOR MARTEL: Yes, sir.

SENATOR LETOURNEAU: Under current rules we have now, are there hardship waivers available for Medicaid patients?

SENATOR MARTEL: Yes there are.

SENATOR LETOURNEAU: Under the rules that would be made under this bill, will there be more rules for hardship waivers included?

SENATOR MARTEL: Yes.

SENATOR LETOURNEAU: Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. I would like to ask on what basis you say that?

SENATOR MARTEL: My interpretation of this bill is the issues regarding the bill, speaking with the commissioner and his staff, Richard Kellogg and Lisa Britt, was that the issues of hardships are brought up and that there would be more options in hardships for people who need them.

SENATOR ESTABROOK: And where in the legislation does it indicate that that will happen?

SENATOR MARTEL: Senator, if you want to debate me on this, okay, I'll debate you anytime. Okay? The issue is that if you allow me to go back and look at the exact line that that is on, I will do that.

SENATOR ESTABROOK: Thank you.

SENATOR MARTEL: Okay, but I am not going to take up the time in the Senate.

SENATOR ESTABROOK: I think it's a critical point and I would like to know where it is in the bill.

SENATOR MARTEL: I understand you, and I am not ducking you.

SENATOR ESTABROOK: Thank you.

SENATOR HASSAN: Thank you, Mr. President. I, too, would be interested in knowing where in the legislation it provides hardship exemptions because I rise with great concern about this bill. I rise with concern about this bill because, although some of the intentions it states are laudable, such as increasing community based and home care options, we have done nothing as far as I know in this state, to actually provide for a greater network of homecare and healthcare and home nursing options. The reality is, it is very difficult to get enough home nursing for people who have healthcare needs who are trying to stay at home. We have a nursing shortage in this state. I would like to ask the proponents of this bill, how exactly they propose to keep more people at home when we don't have an infrastructure as of yet to support more people at home? Is the infrastructure that is being anticipated here that the children or grandchildren of people who were in nursing homes are now going to quit their jobs and stay home to take care of them? That's an economic loss to New Hampshire. That's putting families who are already fragile economically, in even greater harm's way. There are no provisions. There's been no planning that I have been able ascertain, in any of this process, for creating the kind of infrastructure that would actually support greater community and home based healthcare. I think that is an irresponsible thing to do. Let's set up the infrastructure, and then get people back home if we really believe there are people in nursing homes who should not be there. Secondly, as to the notion that the middle class should somehow never be eligible for Medicaid...in case anybody hasn't noticed, the cost of healthcare and the longevity of our population have gone up tremendously. Why? Because we are able to keep people alive longer with more expensive technology. My two in-laws have been through two by-passes, multiple other surgeries. They would not have survived to this date a generation ago. They have spent down their assets. These are two people who have worked all of their lives to put their sons through colleges, like many other New Hampshire families have done. And today, what we are saying is, "Oh gee, sorry, you can work as hard as you can, you can take on multiple jobs. You can save. You can go through your retirement. You can work very, very hard to stay out of nursing homes, but should something unfortunate happen to you, we don't want you to be eligible for Medicaid even if you have no more assets and did your best to stay out of nursing homes." It is also a question why I have gotten multiple emails from attorneys who practice in this field, who question whether there is any evidence that this is going to produce revenues. There are other expenses that are going to happen if we cannot care for people. If nursing homes are not going to be

able to collect payment from either Medicaid or the from the individuals who are in their beds because of this new penalty timing, what are those nursing homes going to do? They're going to absorb the costs at greater expense to those of us who pay for the cost shifting. There's no evidence that this is revenue saving. What I am afraid there is evidence of, is that we again, are confusing luck with merit in this chamber. I do not believe that most New Hampshire citizens can assure that they will never need nursing home care, because we are all a slip in the bathtub away from needing it. Every one of us. And some of us will have the good fortune to have families with considerable savings or a daughter-in-law or a son-in-law, or a grandchild or a spouse, who can take care of us at home, who can juggle everything around. Who can bring in an occasional licensed professional to give them respite. But many people, despite the best planning and best efforts, will not. And it will not be because they are bad people, that they want to take advantage of this state. It will be because health is not something we can predict, because medical costs are rising and outpacing wage earning in this country. And, at the end of the day, we are saying to the most vulnerable in our population that we will not care for them in a responsible way. This legislation is misguided. It is putting the burdens on the wrong people in our society and we should overturn the ought to pass. Thank you very much, Mr. President.

SENATOR BOYCE: Thank you, Mr. President. I will try to be brief. I rise in favor of the ought to pass motion. I wanted to mention a couple of things that had been mentioned before, particularly the long-term care insurance. Yes, long-term care insurance, if you buy it at age 70, is extremely expensive because your likelihood of going into a nursing home the next day is very high. However, if you're like my mother, who in her forties, decided that she did not want to be a burden on her seven children or the state or the county or the federal government, decided that she wanted to buy long-term care insurance. The premiums when you start in your forties, are much lower because the likelihood you're going to go in the nursing home the next day is pretty slim. The closer you get to going into the nursing home, the higher the premium has to be for the insurance company to take that policy. The other issue was that some people who go into a nursing home are going to lose that family home. Now this reminds me of his commercial I hear on the radio down in Boston all the time. "We'll save that retirement cottage on the lakeshore. We'll keep that modest investment. We'll keep that. I can get you qualified for Medicaid in" what, 20 days or something"..., but these are people who are taking advantage of the taxpayers for the purpose of padding their own income to protect people from paying their own share of their own care. If someone in our society has assets which can be used to pay for their own care in their declining years, then the taxpayers of the county, the state and the federal government should not be obligated to pay for that care. If they have a home that's worth \$250,000 and they are going into a nursing home, then the home should be the source of funds to pay for that nursing home care. That's what's fair. This program, when it was put in, back in what the '70s I think it was, was intended to be for the elderly with no insurance, to be a safety net for people with no assets, no income beyond maybe social security. It was to protect them from being in the paupers home, which we did away with. The paupers homes are gone. We now have nursing homes which are paid for by the county, the state and the federal government. This program is out of control. As long as there are people who can do their life planning and make it so that they appear to be a pauper and eligible for a pauper program, which is what this was.

This was intended to be for people with no assets and no income. It was to take care of the poor. It was not intended to take care of somebody who owns a home here and owns a home on the lake, and wants to transfer those to their kids. We should not allow people to artificially impoverish themselves in order to have us pay their bills. They should pay their own bills. That's what this is about. That is why they have extended the look-back, I believe in this, to look back at a longer period, to see what they owned more than five years ago. If they give away their home to their kids and then two years later want to go in a nursing home, I think the kids owe something back to the society that is going to take care of their parents. That's what's fair. What's not fair is the way that this program, since its inception, has mushroomed. Has gone...it has mushroomed, has gone much beyond anything it was ever intended to be. It was not intended to take care of middle income people who wanted to leave a summer home to their kids or wanted to leave their nest egg to their kids. It was to take care of people who could not take care of themselves. I will not take back that there are lawyers in Boston that are advertising, "I will get you qualified for Medicare in 30 days" are anything but a **TAPE INAUDIBLE**. Now, they can take that as they want down there in Boston, these people that are advertising that. I'm sure that nobody in this chamber ever did that kind of work for those purposes. Now, to take somebody and artificially impoverish them in order to qualify for a federal, state, and county paid for program is morally wrong. I don't know what you call anybody that does that. So people that want to do that, that want to protect that home so they can give it to their kids, that's wrong. Because they worked all their lives to take care of themselves, what they earned should take care of themselves. They should not make themselves a burden, purposely, on the rest of society. Thank you very much.

SENATOR ESTABROOK: Question of Senator Boyce.

SENATOR BOYCE: No.

SENATOR CLEGG: Thank you, Mr. President. I know sometimes that we get carried away on the floor, and I for one, am the first one to make a joke or what I think might be a joke about different professions. I don't share the same theory that lawyers doing things are shysters, and I understand that lawyers find loopholes just like we find loopholes. Lawyers work the laws the way we drafted them, and I don't think that when they say to people, "I've found a section in the law that says we can do this" that that's wrong. They are paid to represent their clients. Most of them do a darn good job. And if anybody is at fault for the loopholes, it's us when we create them. So I would like to say that I like what lawyers do for us. I appreciate them, and I don't think the rest of us believe that what you do for a living is something worthy of being called a shyster. I appreciate from time to time that you are actually available to help me out, as Senator Gottesman will attest. I have also enjoyed working with you all. It's helped us immensely here that when we craft the laws, we have some lawyers here who say, "what about this, what about that?" So I just wanted to stand and thank the lawyers that work with us here, and the lawyers on the outside, for attempting to work within the statutes that we create. Thank you, Mr. President.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise to speak in opposition to House Bill 69 (sic).

SENATOR BURLING: Mr. President. Can we not deal with this, Mr. President?

SENATOR EATON (In the Chair): I plan to deal with this after...to have a discussion afterwards. I will speak with you later about that also, but I will have a discussion on that.

SENATOR FULLER CLARK: The reason that I oppose House Bill 691 as written, is because it will put in place a flawed policy that is unfair, unworkable, expensive and, potentially unconstitutional. I would like to speak to, in behalf of my committee when we had this hearing last week on 691, and the fact that we heard a piece of legislation is going to have such far reaching consequences and potentially do harm to the very people that we are trying to protect, that we were not allowed to amend this bill, just as we saw here on the floor of the House today, because people are afraid if it goes to a Committee of Conference it will fail. We have a job to do in the Senate, and that job in the Senate is to take legislation that needs to be corrected and make those corrections so that we can put forth from this body the best possible legislation to be able to implement. The worthy intentions of this bill which, as we heard, is to find a way for people to be able to stay in their homes longer, and to reduce the expenditures in our Medicaid program. But we have also heard that there's no guarantee that that will happen, and there is nothing in this bill that actually is going to make that possible. I would like to say to you that this bill is unfair, because we refused to pass the amendments that my colleague Senator Estabrook brought forward that dealt with the issue of what we were going to do to individuals because of the changes in the penalty period and the recovery period. Now those people, whose eligibility is being altered because of the change in that language, are individuals now, who will be...will not have the resources to support them when they are in need and healthcare and be attended to. We have not provided any of the language in this legislation that the federal government calls for to recognize what undue hardship is. In this state, the only language that we have on the books that recognizes undue hardship has to do with mental incapacity. We are not looking at whether or not people's lives will be put at risk because they don't have access to healthcare or access to proper shelter and food and protection. That's what we need to be doing in this bill before we move forward. This bill is unworkable because, how are we to determine when assets have been set aside because we believe that that was done so that someone could access the Medicaid dollars? There is no standards. And there is...and the Medicaid person is the person who is required to defend that at a time when they are destitute and ineligible. This bill is expensive because it will increase hospital costs, it will increase nursing home costs, and we also are going to ask the Department of Health and Human Services to put together a number of individuals. Nurses are going to have to be out there policing the eligibility in a way that has not happened before. We are taking money out of the Department of Health and Human Services to go for other better causes because of this legislation. And finally, as Senator Hassan referred to, we have had numerous letters and emails about the fact that there are many legal flaws with this bill. And that, if the section that deals with the issue of living trusts is not removed from this legislation, it will be found unconstitutional. So I ask you here today, that we should live up to our responsibilities as state Senators, correct the major flaws in this bill before we let it go forward so that we do not do unintended harm to the very people that we are trying to help. Thank you.

PARLIAMENTARY INQUIRY

SENATOR GATSAS: Parliamentary question, Mr. President, of you?

SENATOR EATON (In the Chair): Parliamentary question.

SENATOR GATSAS: Do we as a body or you as the presiding officer, have the ability to remove statements from the record?

SENATOR EATON (In the Chair): We have someone that is going to be speaking in just a minute. I will have to check with the parliamentarian.

SENATOR GATSAS: Thank you, Mr. President.

SENATOR EATON (In the Chair): Let me just take...we've got to stop for just a second. Respecting decorum is one of the biggest parts of this whole body and Senator Boyce would like to make a statement, I believe.

SENATOR BOYCE: I apologize for using the word "shyster". I did not know that it was...it's apparently offensive as some people take it to be. What I intended to say was that there are some, I believe, unscrupulous lawyers in the profession, but not all of the lawyers. Not all lawyers are unscrupulous and I was simply going...trying to make the point that there are some people who would abuse the system whether it is morally right or not. I mean, they care not whether it is morally right. They only look at whether it's legal. I apologize to anybody who is offended by the term "shyster."

SENATOR EATON (In the Chair): Without objection, I want the comments regarding that...not what was just spoken, but earlier comments removed from the Permanent Register.

SENATOR GATSAS: Thank you, Mr. President.

SENATOR BARNES: Can we have a division on that so that we know everybody agrees.

SENATOR EATON (In the Chair): I said "without objection" and I believe it is unanimous.

SENATOR BARNES: Okay. Thank you.

SENATOR BURLING: Thank you, Mr. President. I had a question of Senator Clark. Senator, as you look at this bill, and as you contemplate its essential idea, which I take it Senator Martel described as the recovery of assets that are transferred away by people in order to make themselves Medicaid eligible, doesn't it seem to you that perhaps the application of the old Internal Revenue Service tax, "in death tax cases", "gifts in contemplation of death" might be a better descriptive and applicable term than what's going on in this bill? I mean, why are we not doing it that way?

SENATOR FULLER CLARK: I would agree with you completely that we have IRS laws in place that look at that issue. That they will challenge individuals who they believe have made gifts in contemplation of death in appropriately, and I do not know why we are not looking at that in this legislation.

SENATOR BURLING: Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. Through the debate, I think we're losing sight of what this bill is really all about. Medicare, as we know it today, is simply not sustainable. We can't continue. If we do, the train's going to hit the wall. The state's going to end up being bankrupt. We've been told that, in the next ten years if nothing

is done about this, if we do absolutely nothing, this will be the biggest expense that the state will have. This bill that you have before you today is a patchwork quilt. It was pretty much watered down in the House. What's left, is holding it together. If you remove any part of it, you won't have a quilt left. Now I call the members' attention to the amended analysis **TAPE CHANGE** from the House, and what this bill actually does. Everybody has been focusing on the assets on this part...on this portion of this bill. But this bill clarifies the law regarding eligibility for nursing home facilities. It clarifies the entitlement to nursing home care. Revises the law regarding asset transfers, which we have been discussing at length, and application for public assistance, which Senator Boyce made very clear. Add to the category, and aid to the needy, blind for purposes of recovering of assistance. Requires the Department of Health and Human Services to seek certain Medicare waivers. It establishes a commission to develop comprehensive state and mental health plans. There is a lot of good stuff in this bill. We have to consider that. If we take any part of it out, the other part doesn't work. That's the reason why there's been so much rejection to amending the bill, taking out parts and making the rest of the bill useless. Thank you very much.

SENATOR BURLING: Senator Letourneau, with your extraordinarily enthusiastic endorsement of this piece of legislation, can you answer the question I asked of Senator Clark? We have at least ninety years of experience of dealing with gifts made in contemplation of death. All of that is in the Internal Revenue Code relative to death taxes. If what you're trying to do in major part is preserve Medicaid by recovering gifts away or transfers away, made to impoverish oneself so you could get Medicaid, why do you not use the concept of a gift made in contemplation of Medicaid, what's the word, eligibility?

SENATOR LETOURNEAU: Senator, I am not an attorney, as you know.

SENATOR BURLING: But you're a lawmaker here.

SENATOR LETOURNEAU: But I am a lawmaker, and policymaker is what we are. What I do know is, there's a lot of people hiding assets, putting them away, so that us, the rest of us and our constituents have to pay for their healthcare in the end.

SENATOR BURLING: A two-part question. First, can you tell me how many in New Hampshire are doing that?

SENATOR LETOURNEAU: I do not know. But I've heard the ads that Senator Boyce is referring to and I know that people abuse these things.

SENATOR BURLING: Second question. If you're right, that a lot of people apparently in the commonwealth of Massachusetts are doing this, why don't you write a bill that authorizes the commissioner to do a look back or transfers in contemplation of Medicaid eligibility? That would at least be targeted to the reality of what you're trying to deal with. What you're doing with here is, as I said before, a wrecking ball aimed at the heart of our middleclass.

SENATOR LETOURNEAU: That's your assessment, not mine. Thank you.

SENATOR HASSAN: For a second time. If there are other people...

SENATOR D'ALLESANDRO: Thank you, Mr. President. Thank you Mr. President. Really, I rise to say, first of all, that I commend the Majority Leader for standing up when the decorum of the Senate began to fall apart. I think that is our role as political leaders to take hold of things

and make sure that the debate that we have is centered on the issues. This is a good debate. It's a good debate about the issues and we recognize that. I think it was in the best interest of this Senate that the Majority Leader got up and said that. That's what we're all here for and that's something that we should sustain. I believe strongly in everyone being able to voice their opinion on the issue, but we should focus on the issue. Stay with the issues. That's how we represent our constituency. So again, I thank the Majority Leader for getting up and taking a stand on bringing us back to focus on the issues. That's what this is all about. Thank you, Mr. President.

SENATOR ODELL: Thank you Mr. President. I certainly had not intended to speak on this because I am not an attorney but, in the dialogue between Senator Letourneau and Senator Burling, I recognize that I am lawmaker and a policymaker and trying to do the right thing. I will say that, from time to time, constituents do come to me and they speak of the unfairness of one family which has lived a good life, being allowed to go on Medicaid and another family not going on it. It does divide some of our communities. It divides people who live on the same street. There is an uncertainty and perception of unfairness at times. But I am not an expert on it. But let me read from something that you also may have received. It just says, and I will quote, "Medicaid must not become an inheritance protection plan. Right now, many older Americans take advantage of Medicaid loopholes and become eligible for Medicaid by giving away assets to their children. There is a whole industry that actually helps people shift costs to the taxpayer. There are ways families can preserve assets without shifting the cost of long-term care to Medicaid. We must close these loopholes and focus Medicaid's resources on helping those who really need it. Doing so will save \$4.5 billion during the next decade." I am quoting from the Secretary of Health and Human Services, Mike Leavitt.

SENATOR HASSAN: Thank you, Mr. President. I rise just briefly. I want to respond, not to the lawyer part of Senator Boyce's remarks, but to the greater concept that he was talking about, and Senator Odell just touched on them as well. Obviously, if there are people who are abusing eligibility for Medicaid, and there are loopholes in our law that allow that abuse, we should always, as policymakers, try to address those loopholes. The fear that many of us have today, with this bill, is that in the process of addressing the loopholes, we are going overboard and really hurting the people who are not trying to use loopholes, who are doing the best they can, but who either made their plans under a different set of laws, and we are not grandfathering them in, or didn't get any legal advice or doing the best they can, and did not have any intention of taking advantage of the state. So one of the principles that I think we have to think about is if you fear being taken advantage of, do you allow that fear to drive you so hard that you then ruin the lives of people who are not trying to take advantage of you? And, from where I sit, you always have to look at the people who are going to be unintentionally harmed by your...by your attempt to get at the abuse. I think we can do a much better job of that than we do in this bill, and it is one of the reasons I oppose it. The other thing I would like to say is, it is concerning to have a discussion on the floor of this Senate about middleclass people taking advantage of the system, by becoming eligible for Medicaid when one, we all know that health care costs have become something that most middle class people can't afford for 10, 15, 20, 30 years after they retire, no matter how much they have saved.

Some of them do spend down their assets and find themselves in need of Medicaid, but secondly, there isn't another industry within the legal profession. They don't do TV ads because everybody who is very wealthy knows where to find them, often in places like large firms that I used to work at. But the wealthy in this country do an excellent job of manipulating the tax code, the federal tax code, to their own financial advantage and, when they do that, that is revenue that does not come into the government, that does not help support the programs for our needy. I find it concerning and frankly offensive, to talk about middleclass people abusing government programs when in fact, the very wealthy in this country, and I dare say some of us who seek tax advice, where we are leveraging the fine line, can we deduct this, can we deduct that? What's the impact of that on our tax revenues? What's the impact of that on our state government? So before we start casting stones, I would ask that we all acknowledge or at least think about the fact that we do have tax codes and other rules and regulations that people throughout our economic strata take advantage of. I for one, am not willing to focus only on middleclass people whose health becomes tentative enough or bad enough to need to go in to a nursing homes, as the only people who abuse the system. Thank you.

SENATOR BARNES: I would like to, after you have the list of speakers, to move the question, please.

SENATOR ESTABROOK: Thank you, Mr. President. A couple of things to add. First, to make the record very clear, Bill Hamilton of the AARP called and listening to this broadcast, and wants it known that, as the representative of the AARP, he opposes HB 691. Let's put that to rest. Then, it's too bad that Senator Boyce has left and would not take my question. Because when he tried to make it appear that long-term care insurance is affordable for those who plan far enough in advance, I would like to know whether his mother's policy meets the criteria for the type of coverage required by this bill. Does his mother's coverage provide thirty-six months of nursing home payment at the average private pay rate for county nursing home facilities? I doubt it. Not many policies do. Does it have an annual benefit inflation factor of at least five percent compounded annually? I doubt it. And does it have coverage for home and community based care equivalent to the benefit provided in a nursing facility? I doubt it. And, whether his mother's premium was reasonable when she took it out at age forty, I don't know how old she is now, but if that premium is going up and up and up. So hopefully, he can put aside the notion that long-term care insurance is affordable the way this bill requires it to be drawn to the average person. Finally, I think it's pretty ironic that the proponents of this bill have tried to portray that the opponents think it's just fine for people to hide their assets. We don't believe any such thing. I, for one, find it especially ironic that you would make that argument and then, at the same time, pass a bill that has a section that allows the wealthy, who pay for a policy that covers them for three years, to then hide all their assets. If you're so worried about people hiding assets, why do you have that provision in here? And, along those same lines, the proponents have tried to make it appear that the opponents of HB 691 do not realize that we need Medicaid reform. Of course we realize we need Medicaid reform. But that doesn't mean this bill is the way we should do it. If we do it the wrong way, we're going to be in even more trouble. We'll see that next year if you pass this.

SENATOR BURLING: Thank you. A brief question. Senator, you were speaking of irony. Do you think there's anything ironic about the fact that huge federal tax reductions, which benefit the top one percent of America's society, have brought on a Medicaid crisis which now requires the decimation of the middle and lower class in bills like this?

SENATOR ESTABROOK: I think we certainly need to give more consideration to the exact provisions of the type of Medicaid reform we are embracing, not just embrace it because it has a nice title.

SENATOR GREEN: I wanted to know if Senator Morse would take a question regarding the Finance issues of this bill?

SENATOR EATON (In the Chair): Senator Morse, who has not spoken, but we will allow it.

SENATOR GREEN: All set? I have always been a strong proponent of in-home care for elderly. And I see that this bill as trying to get at that based on looking at the testimony of Commissioner Stephen. My question, I guess to you is, have we considered, or are you considering in Finance, building in enough money to create the infrastructure so that we can do that, because I see this as saying we want to save the money, but I see nothing in there that indicates to me that we are going to have the money to create the infrastructure so that you can have in fact, money in the budget to pay for home care?

SENATOR MORSE: Senator, if I can answer that and a question, I am going to anticipate. Last night we approved four positions in HHS, in order to beef up the Department so that they could follow up on these abuses. That was something we approved. We did not vote on this last night when we were voting on the budget because we said, we'll have the floor debate and we'll deal with it tonight. Now having said that, I know the question is are going to come about whether this is going to Finance or not and you're a perfect person to be standing, when you were probably afforded the same thing that I am afforded. I get a list. I decide whether or not I want it in Finance. And I decided that I didn't need this in Finance because I am dealing with it in the budget. It's going to come out again the day we deliver the budget if it is passed here on the floor today, and I can give you a prime example of where I've gone against the fact that something has no "FN". While it will make people laugh, House Bill 177, I believe this morning, has an expense, so I said, I'd like that to come to Finance. So it's a prerogative that we have in Finance.

SENATOR GREEN: I don't disagree with that at all. I guess my follow-up question though is, are you going to tell us in the Senate that you are going to make provisions in the budget, to accommodate the needs to build the infrastructure, if in fact this bill gets approved?

SENATOR MORSE: I believe we've done that. I believe that was the intention, and I believe we'll have waivers that are coming in if it's approved that will set this structure. That was the answer.

SENATOR GREEN: I am not talking about the structure of the people, I am talking about the amount of money. I am talking about the people who go in serve the elderly at home. The people...in other words, we are going to transfer the service to these people from nursing homes, if they're not eligible, from what we call community living?

SENATOR MORSE: Oh, I understand you. I am sorry. I apologize. You're asking am I going to create more services like adult day care and...

SENATOR GREEN: No, not more services. We are going to restructure the infrastructure so we are going to save money at the nursing home level, and it is going to cost us something to make those transfers of people who are eligible for in-home care. You can't just create the program without having the people in place to implement it. That's my point.

SENATOR MORSE: I understand that and I apologize 'cause I went in a different direction.

SENATOR GREEN: That's okay.

SENATOR MORSE: Yes, Commissioner Stephen, as part of his budget, which we aren't complete with, has small amounts. I am not saying, you know, they are going to get you millions and millions...

SENATOR GREEN: I am not asking that. I am just saying that...

SENATOR MORSE: His intention is to build that network. We are trying to get our way through that. If we finish today, we might vote on some of that tonight.

SENATOR GREEN: Thank you.

SENATOR LARSEN: Thank you, Mr. President. This group today has done a wonderful job of debating this, of pointing out so many of the faults in House Bill 691. We are hearing and we have heard that, in our effort, in some of our efforts to restrict perceived abuses, that we are in fact, creating unintended consequences on lower and middleclass individuals in this state. We've heard that the bill could cause nursing home problems with its residents who have no payment source. We know that the bill will have some unintended consequences on couples who are attempting to leave a roof over a loved one's head. We've heard that the bill has no safety net for people who are found ineligible for Medicaid. We don't know what happens in a hospital discharge planning when a person who needs long-term care has no payment source. We don't know the answer to that. We know that there are not just people who are elderly who are going to be affected by this bill, but people who wouldn't even expect that they might be affected by this bill. You've seen the example of the 25-year-old accountant who donated to his college, and afterwards was hit by a drunk driver and paralyzed and has to live the next thirty-five years in a nursing home. The instance of a 50 year-old middle income man paying for two children in college, and then receiving a diagnosis of Alzheimer's. The 35-year-old secretary who may have to pay for her mother's long-term health care. Then afterwards finds out she MS and will need nursing home long-term care. All of those points have been well made there today, but I think the real issue is there's something going on with this bill, something which isn't quite right. House Bill 691 has major implications for the way we deal with those who need long-term care. We are passing it after one policy committee meeting. One meeting held in one day with no look at the financial implications. And we are saying we are not going to take it in Finance. Well guess why we are not taking it in Finance? 'Cause we're tucking it in the budget. We saw it last night. Last night we began the process of tucking what's labeled in our budget hearings as GC1 and GC2. Well guess what GC stands for? Granite Care. Granite Care is back folks. And it is coming back, not only in form this way and going back to the House, but it's coming in bit by bit to the budget we are passing. Last night we said forty-five, forty-eight people would not in fact be able to go in the nursing homes, but we would find them homes in community based care. Well, we just passed a bill, or we just refused to pass a bill that wouldn't even allow for minimum

wage increases when we know that there are not enough home and community based care workers in this state yet. But we're gonna eliminate the ability for those who may need nursing home care. We're going to find them other options. Well I hope that we can do that. But I also hope that we go into this with our eyes wide open because, when that budget comes to this floor, it's going to have all these features tucked right in there. There is no analysis that it truly saves us money, other than the hope that we're going to go get all of those assets of people who are artificially impoverishing themselves, while I actually believe that there are far more people who end up needing Medicaid coverage, not because they are devious, but because, in their best efforts to plan, they didn't foresee how long they might need help. I hope we can create that home and community based care that we all talk about. But I think it's wrong to tuck it bit by bit into the budget. I think it ought to be addressed full face. I think we ought to look at the financial implications in the Finance Committee. I think it should have had a full hearing in both the policy committee and Finance, as many of our bills do. I realize our Finance Chair and all of us are under time constraints, but this is an important bill. It is one which could be retained, yet we are pushing this through far too quickly. I smell a fish right here in River City, and I think something's fishy about this bill. I called it a few months back. It was being called Granite Care. I call it "Granite Care Less."

The question is on the motion of ought to pass.

A roll call was requested by Senator Estabrook.

Seconded by Senator Burling.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 16 - Nays: 8

Adopted.

Ordered to third reading.

HB 381-FN, relative to special elections, voter lists, and conduct of elections. Internal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Bragdon for the committee.

Internal Affairs

May 19, 2005

2005-1511s

03/05

Amendment to HB 381-FN

Amend the bill by replacing section 5 with the following:

5 Electioneering by Public Employees. Amend RSA 659:44-a to read as follows:

659:44-a Electioneering by Public Employees. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering. ~~[For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office.]~~ Any person who violates this section shall be guilty of a misdemeanor.

SENATOR BRAGDON: Thank you, Mr. President. I move HB 381 ought to pass with amendment. HB 381 makes miscellaneous changes in state election laws. Specifically, HB 381 permits information from the state-wide voter list to be made available to the courts, to assist in the preparation of jury lists, and permits special elections to be timed to coincide with regularly scheduled elections. The amendment removes the section which the committee felt needed some more work before being brought to the Senate. The Internal Affairs Committee asks for your support of the unanimous ought to pass with amendment recommendation. Thank you.

Amendment adopted.

Senator Burling offered a floor amendment.

Sen. Flanders, Dist. 7

Sen. Burling, Dist. 5

May 26, 2005

2005-1651s

03/09

Floor Amendment to HB 381-FN

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Elections; General Provisions; Terms and Definitions; Electioneer. Amend RSA 652 by inserting after section 16-a the following new section:

652:16-b Electioneer. For the purposes of the election laws, "electioneer" shall mean to act or communicate in any way that a reasonable person would conclude is an attempt to influence how another person may vote at any election on any question or office. "Electioneer" shall not include any printed or written matter attached to any privately-owned vehicle.

2 Centralized Voter Registration Database; Jury Lists. Amend RSA 654:45, VI to read as follows:

VI. The voter database shall be private and confidential and shall not be subject to RSA 91-A and RSA 654:31. *The secretary of state is authorized to provide voter database record data to the administrative office of the courts to assist in the preparation of master jury lists pursuant to RSA 500-A and to the clerk of the District Court of the United States for the District of New Hampshire to assist in the preparation of federal court jury lists.* The voter checklist for a town or city shall be available pursuant to RSA 654:31. Any person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor.

3 Nominations for Special State Elections; Coincidence with Regular Election. Amend RSA 655:81, I to read as follows:

I. The special election shall be held on the Tuesday not less than 80 nor more than 87 days following the day that the governor and council declare that there shall be a special election; *provided, however, that if one or more municipalities where a special election for state representative will be held have a regularly-scheduled election occurring between 80 and 180 days following the day that the governor and council declare that there shall be a special election, the governor and council shall set the date of the election to coincide with the regularly-scheduled election if a majority of the towns or wards, as represented by the city, jointly request that day;* and

4 Electioneering at the Polling Place. Amend RSA 659:44 to read as follows:

659:44 Electioneering at the Polling Place. No election officer shall electioneer while in the performance of his *or her* official duties. ~~[For the purposes of this section, "electioneer" shall mean to act in any way specifically designed to influence the vote of a voter on any question or office.]~~ Any person who violates this provision shall be guilty of a misdemeanor.

5 Electioneering by Public Employees. Amend RSA 659:44-a to read as follows:

659:44-a Electioneering by Public Employees. No public employee~~[-as defined in RSA 273-A:1, IX,]~~ shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering. For the purposes of this section, ~~["electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office]~~ **"public employee" means any person acting as a volunteer for a public employer, as defined in RSA 273-A:1, X, any classified, unclassified, part-time, or seasonal employee of the state, except persons elected by popular vote, and any person employed by a political subdivision of the state, except persons elected by popular vote and persons appointed by the chief executive or legislative body of the political subdivision whose duties imply a confidential relationship to the political subdivision.** Any person who violates this section shall be guilty of a misdemeanor.

6 Vacancies; State Representative. Amend RSA 661:8, I to read as follows:

II. If a vacancy occurs in the office of state representative from a single town or ward district, the vacancy may be filled following the provisions of RSA 655:81 and **RSA 655:82** in the same manner as a state general election is held. In a multi-town or multi-ward district, a vacancy in the office of state representative shall be filled following the provisions of RSA 655:81 and **RSA 655:82** by a special election if the selectmen of any town or **the city for any** ward in said district so request of the governor or council.

7 Political Expenditures and Contributions; Applicability of Chapter. Amend RSA 664:1 to read as follows:

664:1 Applicability of Chapter. The provisions of this chapter shall apply to all state primary, general, and special elections, but shall ~~[not]~~ **only** apply to presidential preference primaries **as provided in this section**. The provisions relating to political advertising, **push polling, and enforcement**, RSA 664:14 through ~~[17-a]~~ **RSA 664:22**, shall additionally apply to **presidential primary**, city, town, school district, and village district elections. The provisions relating to voluntary expenditure limitations, RSA 664:5-a and 664:5-b, shall additionally apply to elections for United States senator and representative to Congress.

8 Effective Date. This act shall take effect January 1, 2006.

SENATOR BURLING: Thank you, Mr. President. I rise to offer a floor amendment to House Bill 381. Senator Flanders and I focused on a number of issues together which we would like to present to you, and obviously I am going jawbone for a minute here while the thing is headed in my general direction. There are three concepts here that we wanted to focus on if I may? I am referring to 1659s and, on the first page, first section, you will see there's a definition of the word "electioneer". What we tried

to do here was to focus the language of the bill to make it clear that to electioneer, the verb "to electioneer", means "to communicate or act in any way that a reasonable person would conclude is an attempt to influence how another person may vote at any election on any question or office." What was inserted here are the three words, "at any election" found on line seven. That's part one of what we proposed. Immediately following that is a further definitional section which says, "electioneer shall not include any printed or written matter attached to any privately owned vehicle." Since the general tenor of the statute is to prohibit electioneering by public employees, I'll get to that in a second, but the fact of the matter is, so many public employees wind up driving their own cars, we didn't want to make it a misdemeanor for somebody, in the course of their employment with a bumper sticker on their back of their car, to get arrested you know, for going to Manchester for the commissioner to drop off some papers. Simple exception reflects the reality of where we are in New Hampshire. If any commissioner or boss doesn't want a state employee driving around with a bumper sticker, give them a car from the pool so they can do the work without using their own personal car. On the second page, page two. From line eight down to fourteen, is a definition of who's included under the phrase "public employee." In the first instance it, and I thank Senator Flanders for this, it means, "any person acting as a volunteer for a public employer." We were all in agreement with that concept. It also includes "any classified, unclassified, part-timer, seasonal employee of the state, except those of us elected by popular vote." And then, with reference to other political subdivisions of the state, "except persons elected by popular vote and persons appointed by the chief executive or legislative body of the political subdivision whose duties imply a confidential relationship to the political subdivision." I offer that with Senator Flanders as our proposed floor amendment, and I would be happy to answer any questions if I can.

Recess.

Out of recess.

MOTION TO TABLE

Senator Bragdon moved to have HB 381-FN laid on the table.

Adopted.

LAIID ON THE TABLE

HB 381-FN, relative to special elections, voter lists, and conduct of elections.

HB 424-FN, prohibiting the receipt of cash gifts by elected officials. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the Senate. This is a bill that came over from the House, one of many that have come over and are going to come over. This basically says that no elected official shall knowingly accept any gift of money. What this basically means is that you cannot accept money for your own personal use. This has not restriction on picnics or getting invited to dinners, tickets or going to other forms of entertainment. It only is gifts of money. As promised by the Attorney General there are many bills being retained by the House which will address those situations, but this basically says that you cannot accept any gifts of money for yourself. You also obviously can

accept gifts of money to put into your campaign fund, but you cannot accept gifts of money for yourself. The committee asks that you support this. Thank you very much.

Adopted.

Ordered to third reading.

HB 617-FN, establishing a commission to study the future role of court reporters in New Hampshire's court system. Internal Affairs Committee. Inexpedient to legislate, Vote 4-2. Senator Boyce for the committee.

SENATOR BOYCE: Thank you, Mr. President. I move that House Bill 617 be found inexpedient to legislate. House Bill 617 sought to establish a commission to study the future role of court reporters in New Hampshire's court system. It further would have compelled the court to put someone on that commission. In fact, it named the Chief Justice as a member of that commission. Our Constitution charges that the Judicial Branch with the administration of the court system. We felt it was inappropriate for us to pass this bill at this time, and therefore, we ask that it be found inexpedient to legislate. Thank you.

SENATOR BURLING: Thank you, Mr. President. I rise in opposition to the pending motion and ask that the House can...House...phew...it's getting late. It is. Mr. President, I rise in opposition to the pending motion and ask that the Senate consider ought to pass if this motion goes down. I want to rise to talk about the financial implications of what is happening to the court reporters. Others will speak in a few moments about the promises that were made to these people and how those promises were relied upon by them and broken. I want to talk about what it means to replace the stenos with monitors and electronic recording devices. It said that this is going to save us a lot of money in the general fund budget, and that might be true, up until the moment when we see a mistrial in a major felony case because the docket record is no good. Now why would the record be no good? Well, the record would be no good if the recording device failed to pick up a couple of pages of testimony by the defendant's expert witness. The record would be no good if the recording device failed to pick up an essential bench conference between the prosecutor, defense counselor and the judge. Why might that happen? Because the mike malfunctioned. Because the monitor wasn't paying attention when the tape ran out in the machine. What would happen? Well, take a four-week criminal case, murder, get in the middle of it and declare mistrial. I'm sorry. Are you okay? You're not in the chandelier, you must be alright. A single major felony case knocked into a loop by the failure of the monitor and the electronic recording device, would put this state into a mess. Not only is there a possibility that double jeopardy would apply with a lousy record, but you'd have the expense of retrying. This was a bad idea to begin with and it was made for short term gain in the budget. A deal was struck, and I sure wasn't in the room when it was struck, the long-term consequences of which are going to be a decline in the quality of the Superior Court record. We will run the risk, because we know it's out there, 'cause it has already happened twice, of major cases being derailed by a failure of the electronic recording device and the monitor who was supposed to be watching the record. I think it's important for us to know what we are doing when we make budgetary decisions like this, and I agree completely. The Chief Justice of the Supreme Court is supposed to be the guy in charge of these issues along with the assistance of his administrative judges in the other four courts. But this hap-

pened because we made budgetary requests of the judicial branch, and a consequences may ensue which we ought to be thinking about. The best possible way to do that would be to continue with this commission. Look at the issue. Ask the tough questions. Know what may happen to our system of justice. I'd just like to say, having spent some time in many of the Superior Courts of this state, we have courts in some of our counties where you can stand right here, speak in a normal voice, and a judge sitting where the Senate President is now sitting, couldn't hear a word you were saying. We've built buildings in the last forty years which have dead spots in them the size of Dover. It's important that we have a competent recording system. And while the decision has been taken for the short run, I hope you will see the sense of at least studying the consequences and putting this commission in place.

SENATOR GOTTESMAN: Thank you, Mr. President. I happen to be one of those older lawyers at this point in my career, who can actually remember having to go to court and being told by the stenographers to speak up, slow down, stop speaking over each other. It made me a better lawyer. It made a better record. I have heard the pleas of the folks who do this job. They are fabulous court personnel. All they are asking for here is a chance to be heard about what their concerns are. You've already heard the concerns from Senator Burling and I agree with those. I have experienced this personally when the record is incomplete, and that is not the fault of the person who is actually running the machine, because those people are nice people as well. Unfortunately, the record is not as complete and, as hard as we try, without a human being behind that stenography machine, it is not the same. I would ask that you defeat the ITL and vote ought to pass on the commission. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to defeat the motion and hope that we will substitute ought to pass. First, let me say this. That no one has worked harder than this administration to try to create good rapport with the judiciary. I applaud the Senate President and the Majority Leader for that. I mean we have good rapport. We brought the Chief Justice over here. He spoke to the body, actually spoke to a joint convention, and gave an articulation of where the judiciary is and that is a great leap forward for those of us who were here during the...what I would say was the time of troubles. Here we have a situation though that I think really bears us looking at. We have a group of people who were offered positions. Once they were offered these positions, and some of them moved at great length to come and take these positions, they were assured, at the time of taking these positions, that they would have these positions as long as they were performing...until the time that they retired. That's a very important situation, because they uprooted themselves, came here, and they do a quality job. No one's ever said anything about the quality of their work. It's a cost situation and I understand that. But they were told by the hiring authority that they would have these jobs. Now these jobs are disappearing. That's not a very fair situation. It seems to me that the commission would at least be in place to make a decision as to what happens going forward. The quality of the record is a fundamental issue. All of us understand law is based on precedent. That record is an indication, it is a verbatim indication of what transpired during that action. And, as Senators, we know that people come to us, now we don't have verbatim, but people come to us and ask us for the transcript of a hearing, particularly in Finance or in Ways and Means, because they want to know what happened, who said what during that

situation, because it plays a role in how they carry on either a case or some kind of activity. So it is very important. But I think the most important thing is a commitment was made to these people and we should honor that commitment. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. Cassidy Bortner. I think everybody remembers that name. She was a twenty-one year-old...a twenty-one-month-old child that was beat to death. I am not hear to question what the courts do with the stenographers, whether they were promised jobs or whether they weren't promised jobs. I was proud to be a Senator because we passed a bill here that allowed the state to review sentencing. This month, fifteen years was added to Chad Evans' sentence because of a bill we passed here last year. I was proud to do that 'cause no child should be beaten to death. But I read some letters that are here before us today that said some of that testimony isn't on those tapes. They failed. We can sit here and pass every great law to protect any child in this state or anybody else. We have 110 study bills. To add one more that I think could effectively save a life or keep somebody in jail is an important issue. I am the first one to say we shouldn't be meddling in the courts' situation, but I think Cassidy would stand before everyone of us and tell us this is something we should be looking at, if she had that ability. To think that Chad Evans deserves a new trial because of a faulty piece of equipment is wrong. So I hope every one of these Senators in here, we send this out unanimous, overturn the ITL, and ought to pass, because we should study something that the laws that we're passing may not have value. Thank you, Mr. President.

SENATOR MARTEL: Thank you, Mr. President. I am not going to go into any long discourse here on this matter. It's a serious...it's a serious issue that we're talking about here. I've got a book full of examples of how the failures of using microphone and tapes of different kinds other than stenographers, and the ramifications of that. Senator Gatsas was just talking about one. I heard Senator Burling as I was going out of the room, was discussing that very issue. I am sure it's been mentioned over and over again, so I'm not going to bore you with that. But I am standing up to make sure that we address this issue. That there are only nine of these people and we make sure that we protect these people because they deserve to be protected, and every citizen that goes through the court system has to have that protection as well. The stenographers are outstanding people with unique talents that a microphone cannot gather. Senator Burling said it himself, when he went into it and said, there's a discussion at the bench and the microphones just don't pick up the whole conversation. The ramifications of what could happen based on that. So I urge you to please overturn the ITL on this bill and let's move forward and have an ought to pass motion after that and bring this legislation where it belongs, and letting the stenographers continue working in our court system. I thank you very much, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I also rise to oppose the ITL recommendation and I just want to add to what you have already heard the following three points that we heard when testimony was presented at hearing. First of all, one of the current duties that these stenographers have is to provide instantaneous translation for hearing impaired jurors or witnesses in the courtroom. Right now when we know there is a trial or other court hearing in which there will be a hearing impaired participant in some role, we are able to assign a stenographer who can, as she records what's going on, the text is in-

stantaneously projected in the courtroom so that the hearing impaired person can participate fully and the state doesn't have to go through the expense and effort of finding sign language interpreters or free lance stenographers to do the same thing. So there's a real function here that provides more access to our courts that we need to be attentive to and I think it's an entirely appropriate policy issue for the legislature to bring to the court's attention. Secondly, in addition to the ramifications for the court...for the state in terms of expense, if the record is lost or unintelligible in some way, there's also a very human case in certain kinds of highly sensitive trials. Imagine if you will, a sex abuse trial where a minor has to testify about sex abuse and there is no discretion to assign a court stenographer to that trial so that therefore, if testimony is lost, the choice will have to be whether that minor is going to have to recount his or her testimony all over again. These are the kinds of very sensitive things that currently having some stenographers in our system allows us to respond to, and I think it's a very important consideration for this body. Finally, I will say that we are all sensitive to the separation of powers as laid out in our Constitution. But I do think that there's an appropriate legislative role here. **TAPE CHANGE** not have as much experience with the digital recording that we now have. So I think it is appropriate for us to take a look at this and offer our observations to the court. Lastly, there was some testimony that indicated that perhaps the court had taken the step of proposing to eliminate stenographers because they thought the legislature had recommended that in part of the audit process. If that is the case, it is certainly appropriate for us to respond with policy recommendations in which we can invite the court to participate in the commission if the court chooses. So those are the reasons that I would support overturning this ITL and then passing this bill. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Can I ask a question of the Internal Affairs Chairman? Thank you, Senator Boyce. I have heard a lot of conversations on this piece of legislation, and did the judges come in and testify on this bill? Did anybody from the court system come in and tell your committee that we should kill this piece of legislation?

SENATOR BOYCE: I believe Howard Zibel was there and that his testimony was that they basically made their decision. The situation on this is that the court, after being...having suggestion from the Legislative Budget Assistant that they could save money by doing this, the performance audit recommended this, I suppose. Is the best way to put that. The court themselves, decided themselves to terminate the use of live stenographers in the court. That was the court's decision and that was the testimony that we had at that committee.

SENATOR BARNES: Thank you. If my memory serves me correct, Howie Zibel represents the Supreme Court?

SENATOR BOYCE: Yes.

SENATOR BARNES: He represents the Chief Justice?

SENATOR BOYCE: Yes.

SENATOR BARNES: So I'm assuming what Howie said is the feelings of the Chief Justice.

SENATOR BOYCE: I assumed that that was, and further, this bill, in creating this commission, it says that "the members shall be" and it names

a couple of Senate and House members, and then the Chief Justice. So this is saying that one of the members "shall be" the Chief Justice or his designee, which might be Howard Zibel. But it further then says that "the commission shall study". I mean, if we pass this, we are telling the courts that they will send someone to this commission, and they will participate in this study, of something they have already decided. The court system has decided that this is where they are going, and we're, with this bill, telling them that they need to come over and talk to us about it. I don't think that that's appropriate. I think we should...

SENATOR BARNES: I got one last item, if I could. Thank you, Mr. President. We have heard from several folks here that know a lot more about this system than I do. We've heard from some of our lawyers, right here in the body and they are opposed to what the committee is trying to do. I guess that is why I am kind of confused. I would think that if Judge Brock was thinking one way, I would think these folks might be, maybe some one of them can get up and explain to me why Judge Brock was wrong?

SENATOR BOYCE: I know...

SENATOR BARNES: Geez, what did I say, Brock? I am sorry. Thank you very much, Mr. President. I read your lips.

SENATOR BOYCE: Broderick. Too many B's there. We did have a lot of testimony, mostly from stenographers themselves, about the good job they do, and there's no doubt that they do a good job. There's no doubt that there is a value to what they do. In fact, they brought in one of the systems where it actually projected on the wall what was being said, as it was being said. I saw nothing that led me to believe that this was not a valuable service; however, the court made the decision to terminate the service and that was what we went on. Was that the court had already decided this and this commission wouldn't even...the report on this would be not until November. I understand the date that the termination of their services is in September, so even if we passed this, it wouldn't do anything until after the fact.

SENATOR BARNES: Mr. Chairman, thank you very much.

SENATOR BOYCE: Sure.

SENATOR FLANDERS: Mr. President, I will be very brief. Some of the testimony that we heard. I believe there are only seven or nine stenographers left in the system. And the testimony I heard today is probably absolutely right. We did not make the decision; the Chief Justice made this decision. My understanding of the audit was that they should look to see if there was a less expensive way to record rather than what they had. They were not told to get rid of the stenographers. My position was, the reason I voted for the ITL is because the court made the decision. It may be the wrong decision, but they made it, and they should live with it. We shouldn't overturn it. We get terribly upset when they stick their nose into our business. I am not sure whether we should stick ours into their business at this time. The chairman is absolutely right. By the time this study is done, all the stenographers are gone because their last date is September. So I just think we ought to just leave it there. They made the decision. Let them make their decision. If it's the wrong decision, they will have to right it. Thank you.

SENATOR LETOURNEAU: Just a brief observation, if you will. Thank you, Mr. President. I will have observe that we here in this chamber, do everything electronically, and as well, it goes over the internet and it is

recorded in the computers downstairs. Having been in the electronics business for forty years, I understand that electronics have moved light years ahead of what we ever expected when we were younger, and they are doing a much better job. I am just making this as an observation. I don't have a dog in this fight. I just want to let the people in this chamber know that electronics does do a better job than what we're hearing here. Thank you.

SENATOR HASSAN: Thank you, Mr. President. Just briefly in response to the inquiry that Senator Barnes made. I have great respect for the Chief Justice, and we did hear from Mr. Zibel, who indicated that the court system believed that it was appropriate to terminate all of the stenographers who are left in the system. We did also hear from Superior Court judges who did come as individuals, and were clear that they were coming as individuals and not as officials of the court. But they came in support of this study commission because of their own experience running courtrooms for years with stenographers. So I just wanted to clarify that we heard from multiple participants in the court system. And, as to Senator Letourneau's point, it is true. I agree with you, electronics is far more advanced, but I also would distinguish between what we do in this chamber and what courts do, because of course, courts have the power to send people to jail and remove freedoms and otherwise make great changes in people's lives as directives, and I think that that does require, under our Constitution, a different level of clarity and certainly the reality is, if a record is missing or unintelligible, it can cause a new trial as a matter of right. And finally, I do not believe that it is appropriate to see this commission work as a means of saving the jobs of the nine stenographers. That is a labor issue, an employment issue that I think is in the court's prerogative and I would not want to interfere with that. I have my own opinion about whether it's the right decision, but that is the court's prerogative as the employer. My concern is a long-term concern about what we understand as a legislative body and as a policy issue about not having some discretion to assign stenographers to the highly sensitive cases or where hearing impaired participants need it. Thank you.

SENATOR FOSTER: Senator Hassan, I haven't spoken and I haven't spoken because the place where I practice, the bankruptcy court for something like twenty years, has had an electronic system. The record looks pretty good to me. We're not dealing with issues like Cassidy Bortner there, but we are dealing with some pretty big issues. Occasionally people will bring in a court reporter with a major case, mostly because they want the record the next day. Was there any testimony about whether we're somehow getting out there on our own or the court of New Hampshire is getting out on its own to be doing an electronic record versus what other states are doing? Because my sense is that, if the bankruptcy courts around the country are doing it at the federal level, probably it's actually not all that uncommon to be going in that direction.

SENATOR HASSAN: Yes. Thank you for your question, Senator. I believe we did hear some testimony that this is not a highly uncommon practice, but we also heard, as Senator Martel indicated with the black notebook of errors in transcripts. We heard that there were a lot of problems in the current system that we have been using as we have gone increasingly towards a recorded system. So I...we didn't hear a great deal of data about how many other states, at least I don't remember that as part of the testimony or how effective it is measured to be.

SENATOR FOSTER: Thank you.

SENATOR ROBERGE: Thank you, Mr. President. As another member of the Internal Affairs Committee, and also here when the court made the decision to go to the electronic system of recording. The court made that decision, and I think we should abide by their decision. They felt that they could live with it. Some judges did come in the other day to support, really their personal stenographers, that they had been very friendly with for years. And I certainly respect that. It was a show of loyalty. I understand why they did it. But I think on the whole when nobody from the Supreme Court came, I think that told us something. Howie Zibel did come. I think we should leave things as they are, the way they wanted to. They made their decision and ask them to rethink the decision they just made, I think is pretty insulting. Thank you.

SENATOR FLANDERS: Just very briefly. I think that somehow we have been sabotaged here. I don't know how many of you have been doing your hearing notices, but I find that mine's missing. I don't know whether the stenographers did that or what, but the hearing notes never got done on this hearing. Thank you.

The question is on the committee report of inexpedient to legislate. A roll call was requested by Senator Burling.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Foster, Clegg, Barnes, Letourneau, Morse.

The following Senators voted No: Burling, Green, Gottesman, Larsen, Gatsas, Martel, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

HB 618-FN-L, relative to persons acting as volunteers to a state agency. Internal Affairs Committee. Ought to pass, Vote 6-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you, Mr. President. I move House Bill 618 ought to pass. House Bill 618 provides workers' compensation coverage and limits liability to persons acting as volunteers for the Department of Health and Human Services and the Department of Safety in the event of a public health or safety emergency. In special events, the state could designate someone as an emergency volunteer. In these rare situations, these volunteers would be covered by the state workers' compensation and not by their regular employer. The Committee asks for the support of the motion of ought to pass, and I note Mr. President, that I also have a floor amendment to present as soon as I am recognized to do so. Thank you.

Senator Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

May 25, 2005

2005-1605s

01/09

Floor Amendment to HB 618-FN-LOCAL

Amend the bill by replacing section 2 with the following:

2 New Subparagraph; Volunteers; Average Weekly Wages. Amend RSA 281-A:15, II by inserting after subparagraph (c) the following new subparagraph:

(d) Any person who is not employed and who is acting as an agent to the department of health and human services or the department of safety as described in RSA 281-A:2, VII(a)(6).

Amend the bill by inserting after section 2 the following and renumbering the original sections 3-4 to read as 5-6, respectively:

3 Computing Average Weekly Wages. Amend the introductory paragraph of RSA 281-A:15, I to read as follows:

I. Except as provided in paragraphs II and III of this section and of RSA 281-A:32 and subject to RSA 281-A:28, 281-A:28-a and RSA 281-A:31-a, **but including those persons under RSA 281-A:15, II-a**, an average weekly wage shall be computed by using the method in subparagraph (a) or (b), or (c) that yields the result more favorable to the injured employee:

4 New Paragraph; Average Weekly Wages; Certain Volunteers. Amend RSA 281-A:15 by inserting after paragraph II the following new paragraph:

II-a. Any person who is employed and who is on leave from such employment and who is acting as an agent to the department of health and human services or the department of safety as described in RSA 281-A:2, VII(a)(6) shall have his or her average weekly wage computed under paragraph I of this section.

2005-1605s

AMENDED ANALYSIS

This bill provides workers' compensation coverage to persons acting as volunteers for the department of health and human services and the department of safety in the event of a public health or a public safety incident. This bill also limits liability for such volunteers.

SENATOR HASSAN: Thank you, Mr. President. The amendment is 1605s that is being passed around now. What the amendment does is something we discussed at committee. Currently the bill provides that the amount of compensation that such a volunteer would get would be the average state weekly wage or amount of compensation. Since some of these volunteers would be on leave from jobs that paid more than that, in order to be volunteers in these states of emergency, this amendment simply says that if they are on leave from such a job, the amount of workers' compensation would be based on the salary that they earn in their regular job. We want to give people incentives to do this volunteer work and not fear that they wouldn't get the same workers' compensation that they would get if they had been injured in their regular job. That's all this amendment does. I ask for your support for it. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 158, relative to Auburn, Exeter, and Hampton District Courts. Judiciary Committee Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

Senate Judiciary

May 19, 2005

2005-1516s

09/10

Amendment to HB 158

Amend the title of the bill by replacing it with the following:

AN ACT relative to district courts.

Amend the bill by inserting after section 3 the following and renumbering the original section 4 to read as 6:

4 District Courts; Henniker District. Amend RSA 502-A:1, XV to read as follows:

XV. HENNIKER DISTRICT. The Henniker district shall consist of the towns of Henniker, Warner, and Bradford in Merrimack county. The district court for the district shall be located in Henniker, holding sessions regularly therein and elsewhere in the district as justice may require. ***Notwithstanding the foregoing, the district court for the district may be temporarily located in Hillsborough.*** The name of this court shall be the Henniker District Court.

5 District Courts; Hillsborough District. Amend RSA 502-A:1, XXIII to read as follows:

XXIII. HILLSBOROUGH DISTRICT. The Hillsborough district shall consist of the towns of Hillsborough, Deering, Windsor, Antrim and Bennington in Hillsborough county. The district court for the district shall be located in Hillsborough, holding sessions regularly therein and elsewhere in the district as justice may require. ***Notwithstanding the foregoing, the district court for the district may be temporarily located in Henniker.*** The name of this court shall be the Hillsborough District Court.

2005-1516s

AMENDED ANALYSIS

This bill changes the name of the Auburn judicial district to the Auburn-Candia-Raymond district. The bill requires the district court to be located in Auburn, Candia, or Raymond and to bear the name of the town in which it is located.

The bill also temporarily changes the locations of the Hampton District Court and the Exeter District Court. The bill permits the Henniker District Court to be temporarily located in Hillsborough and the Hillsborough District court to be temporarily located in Henniker.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 158 ought to pass with amendment. The bill changes the name of Auburn Judicial District to the Auburn-Candia-Raymond District and would allow the court to be located in any town in the district. The bill also recognizes that the Exeter and Hampton District Courts have been moved temporarily by the Court Accreditation Commission while their status is addressed. The committee amendment allows the Henniker-Hillsborough District Court to be located in either of these towns, depending upon which town comes up with a location. The Judiciary Committee recommends that this legislation be adopted with amendment and asks for your support. Thank you.

SENATOR BARNES: Thank you, Mr. President. I just want to thank Senator Clegg and the rest of that committee. I think they did a great job on that piece of legislation, and I hope we can all vote for it.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 204-FN, relative to unauthorized video surveillance. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Foster for the committee.

Senate Judiciary
May 3, 2005
2005-1321s
04/10

Amendment to HB 204-FN

Amend the title of the bill by replacing it with the following:

AN ACT prohibiting unlawful peering into the dwelling place of another.

Amend the bill by replacing all after the enacting clause with the following:

1 Breaches of Peace; Violation of Privacy. Amend RSA 644:9, II to read as follows:

II. As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance including public restrooms, locker rooms, *the interior of one's dwelling place*, or any place where a person's private body parts including genitalia, buttocks, or female breasts may be exposed.

2 New Section; Breaches of the Peace; Peeping. Amend RSA 644 by inserting after section 9 the following new section:
644:9-a Unlawful Peering.

I. A person is guilty of a class B misdemeanor if such person unlawfully and without the consent of the persons entitled to privacy therein, peers through a window, door, or other similar opening into the interior of another person's dwelling place for the purpose of observing the private body parts of any person therein, including, but not limited to, the genitalia, buttocks, or female breasts of such person. Any person convicted of a second offense under this paragraph shall be guilty of a class A misdemeanor.

II. This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel, nor is anything in this section intended to limit employees of governmental agencies or other entities, public or private, who, in the course and scope of their employment and supported by articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law, or pattern of business practices adversely affecting the public health or safety.

3 Effective Date. This act shall take effect January 1, 2006.

2005-1321s

AMENDED ANALYSIS

This bill amends the definition of "private place" for the purpose of violations of privacy and establishes the crime of unlawful peering.

SENATOR FOSTER: Thank you, Mr. President. I move HB 204-FN ought to pass with amendment. This bill adds the interior of one's dwelling to the definition of private places for the purpose of determining a violation of privacy. It also specifically says that one cannot videotape someone's body or the interior of a person's home. The committee amendment adds language adopted in SB 48 which dealt with peering into a dwelling house, which was amended by the House a few weeks ago, in a manner not acceptable to the committee. The language is added here so that one bill dealing with similar subject

matters can be dealt with, hopefully by way of a Committee of Conference. The Judiciary Committee recommends the bill with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 323-FN, relative to excluding social security numbers and other information from documents filed with registries of deeds. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

Senate Judiciary

May 19, 2005

2005-1521s

05/10

Amendment to HB 323-FN

Amend the bill by replacing all after the enacting clause with the following:

478:4-b Records; Social Security Numbers and Financial Information.

I. The preparer of a document shall not include an individual's social security number, credit card number, or other financial account numbers in a document that is prepared and presented for recording in the office of the register of deeds. This paragraph shall not apply to state or federal tax liens, certified copies of death certificates, and other documents required by law to contain such information that are filed or recorded in the office of the register of deeds. For the purpose of this section, "preparer" shall mean the person who drafts the documents that are recorded with the register of deeds. Preparer shall not include any person who hires, requires, refers, pays, or requests that the documents be drafted or recorded.

II. If a deed or instrument that includes an individual's social security number, credit card number, or other financial account numbers, was filed with the register of deeds and is available on the Internet, the individual may request that the register of deeds redact such information from the Internet record. The register of deeds shall establish a procedure by which individuals may request that such information be redacted from its files which are available on the Internet. Upon request, the information shall be redacted.

III. The register of deeds shall comply with an individual's request to redact his or her social security number, credit card number, or other financial account numbers within 5 business days of the receipt of the request, or sooner, if ordered to do so by a court, for good cause shown.

478:4-c Violation; Enforcement. An individual aggrieved by a violation of RSA 478:4-b, I may bring against the preparer:

I. An action to enjoin such violation.

II. An action to recover actual monetary loss from such a violation, or to receive up to \$1,000 in damages for each such violation, whichever is greater.

III. Both such actions.

3 Effective Date.

I. RSA 478:4-b, III as inserted by section 1 of this act of this act shall take effect March 1, 2006.

II. The remainder of this act shall take effect January 1, 2006.

SENATOR FOSTER: Thank you, Mr. President. I move HB 323-FN ought to pass with amendment. Identity theft is a huge problem in our nation. This bill attempts to address a small source of the problem. The bill prohibits the inclusion of a person's social security number or other financial information including credit card accounts on documents filed with our registries of deeds. If this has already occurred or occurs in the future, the bill allows an individual to request that their social security number be removed from the registry's internet site. The committee amendment makes the bill effective January 1, 2006 and provides that the registries will have their documents on the internet, have two months in order to comply with the statute. Thereafter, information must be removed within five business days of an individual's request. The Judiciary Committee asks your support of the bill with amendment. Thank you.

SENATOR FLANDERS: One quick question, Senator. I see that there were some people there opposed to it. What were the reasons for the opposition?

SENATOR FOSTER: Frankly, I might defer to another member of the committee because I didn't actually have the hearing. I don't know whether Senator Gottesman would like to address the question if he recalls or another member of the committee.

SENATOR EATON (In the Chair): Point of order Senator Flanders. It was 5-0.

SENATOR FLANDERS: There were some people who testified against it. I am sorry. Representative Patten and Rockingham County Registry of Deeds opposed it and I was wondering why.

SENATOR GOTTESMAN: If I may, Mr. President. The Registrar of Deeds testified it was too expensive but there was some difference in what she thought was the method that had to be used. She was talking about a complete removal from the base worm drive that the registry keeps, when in fact, we're talking about blocking it so that it doesn't go out over the internet. The permanent record would stay at the Registry of Deeds. As it was explained to us, it's not very expensive to do that.

SENATOR FLANDERS: Thank you.

SENATOR LETOURNEAU: Yes. Just to further what Senator Gottesman just said relative to Senator Flanders' question. I spoke with the Commissioner from the Register of Deeds from Rockingham County who did come in and speak against the bill. She didn't quite understand it. She came to my office last week and said she was okay with it.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 533-FN, relative to penalties for aggravated felonious sexual assault. Judiciary Committee. Re-refer to committee, Vote 5-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that House Bill 533-FN be re-referred to committee. This bill deals with a recent New Hampshire Supreme Court ruling and attempts to clarify the term "previously convicted" when looking at the potential sentence of life

imprisonment. After careful consideration and consultation with the Attorney General's Office, the Judiciary Committee is not ready to bring language forward at this time. We ask that the bill be re-referred so that more work can be put into this important statutory clarification. Thank you.

Adopted.

HB 533-FN is re-referred to the Committee on Judiciary.

HB 574-FN, requiring the reporting of burn injuries. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Green for the committee.

Senate Judiciary

May 18, 2005

2005-1472s

01/05

Amendment to HB 574-FN

Amend RSA 153:11-a, I as inserted by section 1 of the bill by replacing it with the following:

I. In any case where a health care professional is called upon to examine or treat a person for a burn injury and has reasonable cause to suspect that the burn injury was sustained in connection with the commission of a crime, or in the handling of explosives, or if a burn injury requires inpatient admission to a hospital, the health care professional shall report such burn injury to the state fire marshal immediately by telephone or electronic means and followed within 48 hours by a report in writing, if so requested by the state fire marshal.

SENATOR GREEN: Thank you very much, Mr. President. I move that House Bill 574-FN ought to pass with amendment. This bill requires that health care professionals must report burn injuries to the State Fire Marshall under certain circumstances. The bill also grants rulemaking authority to the Fire Marshall in order to implement the statute. Having burn injuries reported would enable the Fire Marshall to create a database. This database would provide additional information for reporting statistics as well as tracking arsonists and juveniles with the potential of committing further crimes. The committee amendment merely corrects a typographical error in the bill. The Judiciary Committee requests your support for this bill with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

A division vote was requested.

Yeas: 12 - Nays: 12

Motion failed.

Senator Bragdon moved inexpedient to legislate.

A division vote was requested.

Yeas: 12 - Nays: 12

Motion failed.

MOTION TO TABLE

Senator Barnes moved to have HB 574-FN laid on the table.

Adopted.

LAI D ON THE TABLE**HB 574-FN, requiring the reporting of burn injuries.**

HB 628-FN, relative to the authority of law enforcement officers to close an area for the purpose of abating a threat to public health or safety. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Roberge for the committee.

Senate Judiciary**May 18, 2005****2005-1471s****04/05****Amendment to HB 628-FN**

Amend RSA 644:2, IV(a) as inserted by section 2 of the bill by replacing it with the following:

IV.(a) Whenever a peace officer has probable cause to believe that a serious threat to the public health or safety is created by a flood, storm, fire, earthquake, explosion, riot, ongoing criminal activity that poses a risk of bodily injury, or other disaster, the officer may close the area where the threat exists and the adjacent area necessary to control the threat or to prevent its spread, for the duration of the threat, until related law enforcement, fire, and emergency medical service operations are complete, by means of ropes, markers, uniformed emergency service personnel, or any other reasonable means, to any persons not authorized by a peace officer or emergency services personnel to enter or remain within the closed area.

Amend RSA 644:2, V (a)(3) as inserted by section 2 of the bill by replacing it with the following:

(3) A command not to enter or a command to leave an area closed pursuant to paragraph IV, provided that a person may not lawfully be ordered to leave his or her own home or business.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 628 ought to pass with amendment. This legislation sought to authorize law enforcement officers to close an area for the purpose of abating a threat to public health or safety. The Judiciary Committee had concerns regarding the subjective language of standard a police officer would use to trigger the powers granted in this bill. The committee amendment narrows the standard to be used to probable cause to believe that a serious threat to public health or safety is created during specific events. Probable cause is a standard commonly used in criminal law. The amendment also specifies that, during the course of these events, a person cannot be compelled to leave his or her own home or business. The Judiciary Committee recommends ought to pass as amended. Thank you.

PARLIAMENTARY INQUIRY

SENATOR MARTEL: Parliamentary question, Mr. President, inquiry?

SENATOR EATON (In the Chair): Please.

SENATOR MARTEL: Don't we have legislation that is already in place which takes care and handles circumstances like this? Is that a proper question?

SENATOR EATON (In the Chair): Not of the chair, I don't believe. I think we have a lot of different legislations in there, but that is something you'd want to talk to our legal counsel about.

SENATOR MARTEL: I'll do that. Thank you. I'm sorry to question you.

SENATOR EATON (In the Chair): That's all right.

Amendment adopted.

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

May 25, 2005

2005-1635s

08/10

Floor Amendment to HB 628-FN

Amend the bill by replacing section 3 with the following:

3 Effective Date. This act shall take effect upon its passage.

SENATOR FOSTER: Thank you, Mr. President. I have a floor amendment which I will speak to while I am passing out, which merely changes the effective date of the bill, which I believe says January 1st to upon passage. This was a specific request of the Attorney General's Office to make the bill effective upon passage so that the powers we're granting to law enforcement here can be utilized during the summer months if necessary. That is amendment number 1635s. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. Would a member of the committee yield to me on a question about this?

SENATOR FOSTER: Yes.

SENATOR BURLING: Are we in any way, by passing this, affecting the command and control arrangements that exist between police and fire? Because it has been my experience that they can get into...

SENATOR FOSTER: The legislation is not intending to do that, no. There was no testimony to that effect or any concern raised to that effect during our hearings.

SENATOR BURLING: And were fire officials present to see this and discuss it?

SENATOR FOSTER: I must say that I don't recall any fire official being at the hearing. If there are other members of the committee recall that, I don't.

SENATOR BOYCE: Well, anybody from the committee that can explain the amendment that we've already voted on.

SENATOR EATON (In the Chair): The amendment that we just voted on?

SENATOR BOYCE: Yeah, I have a question as to what the bill reads as of right now, so that I can make the decisions as to what the amendment we are looking at really does do.

SENATOR BOYCE: Senator Foster, I am looking at the amendment in the calendar and looking at the bill. Now does this part...the first part of the amendment that amends "as inserted in section II of the bill." That appears to only do the section of the bill between lines 5 and 14. The lines 15-21, do those remain in the bill now?

SENATOR FOSTER: I believe they would because it says we are only amending IV a, as inserted by section II.

SENATOR BOYCE: Okay. I just wanted to make sure exactly what we were about to vote on. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 640-FN, relative to parental rights and responsibilities. Judiciary Committee. Ought to pass with amendment, Vote 6-0. Senator Clegg for the committee.

Senate Judiciary

May 18, 2005

2005-1494s

05/04

Amendment to HB 640-FN

Amend RSA 461-A:6 as inserted by section 1 of the bill by inserting after paragraph VI the following new paragraph:

VII. At the request of an aggrieved party, the court shall set forth the reasons for its decision in a written order.

Amend RSA 461-A:7, IV(d) as inserted by section 1 of the bill by replacing it with the following:

(d) A finding of alcoholism or drug abuse, unless all parties agree to mediation.

Amend RSA 461-A:7 as inserted by section 1 of the bill by inserting after paragraph IV the following and renumbering the original paragraphs V-VIII to read as VI-IX, respectively:

V. The court shall not order mediation if there is a finding of domestic violence as defined in RSA 173-B:1, unless all parties agree to mediation.

SENATOR CLEGG: Thank you, Mr. President. I move House Bill 640-FN ought to pass with amendment. This bill is a result of the Task Force on Family Law and changes the language used in custody proceedings and hopefully the tone of those matters. For example, it removes the word "custody" from the current statute, replacing it with "parental rights and responsibilities." The bill also provides criteria for establishing the best interest of a child in these situations. It also mandates mediation of these cases in most instances. The committee amendment requires that the court, at the request of an aggrieved party, must set forth the reasons for its decision in a written order. The amendment further protects victims of domestic violence from being ordered to participate in mediation, consistent with other statutes. The Judiciary Committee recommends this bill with amendment and asks for your support. Thank you.

Amendment adopted.

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

May 25, 2005

2005-1612s

05/01

Floor Amendment to HB 640-FN

Amend the bill by replacing section 22 with the following:

22 Effective Date. This act shall take effect October 1, 2005.

SENATOR FOSTER: Thank you, Mr. President. I have a floor amendment which I would like to pass out, 1612s. This floor amendment, much like the one I previously submitted on the previous bill, merely changes the effective date of the bill. The House passed this bill effective upon

passage, and if you were to scroll through it, you'd see that a lot of new language is used, which is going to mean a lot of new forms that the courts are going to have to put forward, and frankly, just to train court personnel. The courts had asked that this not go into effect immediately, and the amendment merely makes the effective date October 1, 2005. Thank you, Mr. President.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 643-FN, establishing an integrated criminal justice information system. Judiciary Committee. Ought to pass with amendment, Vote 5-0. Senator Foster for the committee.

Senate Judiciary

May 19, 2005

2005-1512s

09/01

Amendment to HB 643-FN

Amend RSA 106-J:5, I as inserted by section 2 of the bill by inserting after subparagraph (j) the following new subparagraph:

(k) The president of the New Hampshire Association of Counties, Corrections Affiliate, or designee.

Amend RSA 106-J:7, II-III as inserted by section 2 of the bill by replacing them with the following:

II. It shall be a class B misdemeanor for any authorized user of J-One to access J-One for a purpose unrelated to that person's official duties in connection with the administration of justice; provided, however, that if the authorized user accepts money or other consideration from another in exchange for the unauthorized access, it shall be a class A misdemeanor for a first offense or a class B felony for a second or subsequent offense.

III. Any person who pays, or provides any other consideration to, an authorized user of J-One in exchange for that user gaining access to J-One for an unauthorized purpose shall be guilty of a class A misdemeanor for a first offense or a class B felony for a second or subsequent offense.

SENATOR FOSTER: Thank you, Mr. President. I move HB 643-FN ought to pass with amendment. The bill creates the integrated criminal justice information system known as "J-One." Under the current system, when someone's records move from the Department of Safety or the Attorney General's Office to the court system and subsequently to the prison, each time the information in the record must be re-entered into a computer system by hand. This is duplicative, a waste of time, and consumes unnecessary resources and makes the data prone to error. The J-One system will establish one system that can be accessed by various departments as well as any police department that has an active investigation. The amendment left the bill as written, but enhanced certain penalties for those who might improperly access this data, particularly for sale. The Judiciary Committee recommends the bill with amendment. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 692-FN-L, relative to the county department of corrections. Judiciary Committee. Ought to pass with amendment, Vote 4-2. Senator Green for the committee.

Senate Judiciary

May 19, 2005

2005-1517s

09/04

Amendment to HB 692-FN-LOCAL

Amend the bill by replacing section 1 with the following:

1 Place of Commitment; Expenses of Protective Custody. Amend RSA 30-B:15 to read as follows:

30-B:15 Place of Commitment; Expense of Protective Custody.

I. Any person committed to a county correctional facility for any offense shall be committed to a county correctional facility in the county in which the offense is committed. *For any person sentenced to a term of imprisonment of up to 12 months, the expense of lodging such person in a county correctional facility shall be a charge upon the county. For persons sentenced to terms of imprisonment in a county correctional facility that exceed 12 months, the first 12 months of the sentence shall be a charge upon the county. Any sentence exceeding 12 months of imprisonment shall be a charge upon the state.*

II. The expense of lodging persons in a county correctional facility under the protective custody of a peace officer under RSA 172:15 or RSA 172-B:3 shall be a charge upon the county. *The expense of lodging such persons in a county correctional facility for any period exceeding 12 months shall be a charge upon the state.*

III. Whenever the expense of lodging a person in a county correctional facility is to be a charge against the state under this section, the state shall have the authority to take physical custody of such person.

2005-1517s

AMENDED ANALYSIS

This bill requires the state to pay expenses of lodging persons in county department of corrections facilities for any time period greater than 12 months.

SENATOR GREEN: Thank you, Mr. President. I move that House Bill 692-FN ought to pass with amendment. This bill clarifies current law that says the state must pay for imprisonment over twelve months. The issue addressed here is when judges sentence individuals to consecutive twelve-month sentences in order to keep them at the county jails. Incarceration at the county level is paid by local property taxes and is supposed to be for sentences of twelve months or less. The costs of incarceration in the state prison system are borne by the general fund and are for sentences longer than one year. The committee amendment clarifies current statute and reiterates that, if the state is to pay, they also have the authority to take physical custody of the prisoner. The Judiciary Committee recommends the bill with amendment and asks for your support. Thank you.

Amendment adopted.

Senator Gottesman offered a floor amendment.

Sen. Gottesman, Dist. 12

Sen. Burling, Dist. 5

May 25, 2005

2005-1622s

09/01

Floor Amendment to HB 692-FN-LOCAL

Amend RSA 30-B:15 as inserted by section 1 of the bill by deleting paragraph III.

SENATOR GOTTESMAN: Thank you, Mr. President. I have an amendment. It's 1622s which, if you look at the amendment in the calendar, it removes paragraph III. Paragraph III is a provision that says, once the state is involved with the payment for a criminal, even though they have been housed at the county house of correction, that the state can...the state has the authority to now take that individual to the state facility. Which means a person who has agreed to serve his or her time in the house of correction, can finish their sentence at the state prison without ever planning on doing so. So I am in favor of the rest of the bill except for this provision, and that's why two of us voted against it in committee. So I would ask that you support this amendment. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise against the amendment. As the bill currently stands, it is in my opinion, revenue neutral because if the county is going to charge the state, the state has the right to take the prisoner. If you take that section out, you've left a wide open spot where the counties can charge whatever it wants to the state and the state would have to pay. That leaves a huge possibility of the state paying hundreds of thousands of dollars. We don't know what it is. The fact that a county prosecutor cut a deal with somebody and said, if you plead guilty, you'll do your two years in county prison. Well, then the county ought to accept responsibility for its prosecutor. However we do it, I understand what the counties are doing. They are saying that somebody that's got an 18-month sentence or 2 one-year sentences, and ends up in the county jail, that's two years. It ought to be paid for by the state. But if the state is going to have to pay for his incarceration, then the state should be allowed to take that prisoner and put it in the facility that it currently runs where it can control costs on its own. So I ask that you vote down the amendment in all fairness to the state. Thank you, Mr. President.

SENATOR BURLING: Thank you, Mr. President. I rise in favor of the floor amendment. I do so because actually I believe in property tax relief. There is fiction out here that we have two systems of corrections - one at the county level and one at the state level. That's wrong. We have one correctional system in this state. We have one set of criminal laws, and we have one system of justice. And if a Superior Court Judge sentences a defendant to two consecutive one-year terms, to be served in the county house of correction, that is a criminal sentence handed down by the Superior Court. We have said since the 1930s when we passed the constitutional amendment requiring the counties to keep their jails open, that misdemeanors got served, the one-year sentences got served in the county hoosegows. If it goes more than the misdemeanor section, one year, the state ought to pay for it. Why should we continue to transfer

costs down onto the county property taxpayers? This is an area where the citizens of New Hampshire should pay the costs of keeping somebody in jail for more than a year. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you. Senator Burling. Now the person who is being incarcerated and being sent to this county hoosegow, as you call it.

SENATOR BURLING: It's a Sullivan County term.

SENATOR LETOURNEAU: Wouldn't that person live in that county and have committed the crime in that county?

SENATOR BURLING: Mr. President, may I answer the question?

SENATOR EATON (In the Chair): Yes, it was directed to you.

SENATOR BURLING: The answer is maybe.

SENATOR GREEN: Oh, boy. I rise in opposition to the amendment. We had this discussion in committee, as the good Senator from Nashua remembers, I am sure. And I happen to, at this point, agree with Senator Burling that I'm interested in saving the county and the local communities money, but here it is just the opposite if I may tell you this, please. If they keep them for twelve months, that's their prisoner and they pay. After that, however, the question then becomes which is more expensive? It is one court system, but I'm going to tell you, there is a different price tag at one jail or one prison versus the other. I think it is only appropriate to, that whoever has custody of that prisoner, after what the law requires for the first twelve months, is the one who should pay. I think that helps the local property taxpayer. You have a question. Could we agree to disagree?

SENATOR BURLING: Absolutely. I just can't figure out what the disagreement is.

SENATOR GREEN: Okay.

SENATOR HASSAN: Of Senator Clegg, please. My question arises out of confusion so I am hoping that you can help me. It seems to me, the way to go at this problem, if somebody is sentenced for more than one year in a county jail, which I understand from testimony we heard on another bill, is less expensive than state prison, that the state should only have to pay the county rate if the person stays at the county jail. My question is, is there anything in these amendments that allows that to happen?

SENATOR CLEGG: There's nothing in this...in either of these amendments that limits what the county could charge. The county could charge just what it charges the federal government for prisoners. That's why, if they can't come to some reasonable agreement, section III, which this amendment tries to take out, allows the state to take possession of the prisoner or custody of the prisoner. So, if it can't be done for less money outside, then the state shouldn't be forced to pay more money than it would cost on its own to care for that prisoner.

SENATOR HASSAN: And I guess my question...follow up if I may? Is there something we could do to this bill so that we could put in a provision that would say that the state is only liable for the actual cost at the county level?

SENATOR CLEGG: I'm not sure we want to do that, because who is going to calculate what the actual costs of that prisoner is? Are we go-

ing to include maybe it's a prisoner who has some health issues and does the county say "Here's what it's going to cost, pay me..." and how do we dictate to the counties what they can **TAPE CHANGE**.

SENATOR HASSAN: May I respond to that question? I guess my final follow up would be, wouldn't it seem possible that since the county provides budget figures about the per prisoner costs on a regular basis, that we could come up with some approach that would set a reimbursement rate that is reasonably related to the costs and still less than the state would pay if the state took custody of the prisoner?

SENATOR CLEGG: Having served eight years on the County Government Committees and the Executive Committees, I would say no. Because if I were a House member, I would reject the state telling me what I can and cannot charge because we consider in Hillsborough County our prison to be an income generator, because we were renting beds to the federal government. So if you put in here what people could charge for beds, or if we tried to determine what it was that Hillsborough County again for instance, could determine was a taxable cost to care for a prisoner, I might not be very happy with that because I think it's worth more. I may want to do it...so I say if you leave this in and defeat this amendment, the state can go to the county, they can say, here's how much we'll keep that prisoner for. And the state can say, "well, that's a good deal" or the state can say, "you're nuts. I'm taking him with me." I think that is the fairest way to do it. Neither one is obligated to maintain the relationship they don't want to maintain. But, the person who pays for custody, ought to be able to have custody.

SENATOR HASSAN: Thank you.

SENATOR FOSTER: Thank you, Mr. President. I was the other two in the 4-2 vote. I am speaking in favor of the amendment here. I am sympathetic to Senator Clegg's concern about costs. The thing that I'm not at all sure of is whether we actually know whether this will cost money or save us money. I say that because as he himself spoke, sometimes people will negotiate a deal so they end up in the county jail. What if the defense counsel knows that that deal is not certain, that their defendant can be yanked from the county jail and explains that to the individual?. The individual says "maybe, you know, maybe I'll go to trial now." And what are the costs of those trials, and do we know what the costs of those trials might be? We didn't you know, have any hearing on this particular part of the amendment. I guess I'd feel better if I knew the bill was going to go to Finance. I don't know that it is going to go to Finance or not. Maybe the Senate President can tell us that so we could sort of inquire to that, but there could be an unintended consequence of the committee amendment which is why I favor Senator Gottesman's amendment. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. Again, I don't look at this as a financial issue. I am in full agreement that the payment terms that are set forth in here should be followed. I look at this as a judicial issue. A judge is going to look at each particular case, determine the sentence, determine the place for the prisoner to serve that sentence. And, at the end of the day, when that judge makes his or her decision, and the prisoner is taken from the house of correction and put in the prison population, all things change. All hopes of rehabilitation towards the end of that sentence change. So I am very concerned with only that aspect of it, and that's why I am only trying to address that aspect. Thank you, Mr. President.

**The question is on the adoption of the floor amendment.
A division vote was requested.**

Yeas: 8 - Nays: 15

Floor amendment failed.

**The question is on the adoption of the bill as amended.
Adopted.**

Referred to the Finance Committee (Rule #26).

MOTION TO REMOVE FROM THE TABLE

Senator Hassan moved to have HB 611 removed from the table.

Adopted.

HB 611, relative to small group insurers.

The question is on the committee report of inexpedient to legislate.

SENATOR HASSAN: Thank you, Mr. President. I would urge the body to defeat the inexpedient to legislate and then I have a floor amendment. This bill, along with Senate Bill 125, which we passed, does not include provision for an oversight committee, similar to the one we have had on small group insurance reform. So that would be what my floor amendment would be addressing, and I will speak to that after the ITL motion. So I would defeat people to defeat the ITL.

Recess.

Out of recess.

SENATOR HASSAN: Thank you, Mr. President. I am kind of figuring out where we are. We are still on the ITL motion, correct?

SENATOR EATON (In the Chair): The bill is HB 611 is inexpedient to legislate.

SENATOR HASSAN: And I am urging my colleagues to defeat that because I do have a floor amendment and the floor amendment would strip out the current content of 611 and replace it with an amendment that would provide for an oversight committee and then the provisions of Senate Bill 125, which we passed last month. And on that, I would just urge my colleagues to defeat the ITL.

Motion failed.

Senator Hassan moved ought to pass.

Senator Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

May 26, 2005

2005-1647s

01/09

Floor Amendment to HB 611-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to the joint legislative oversight committee on small group health insurance reform and repealing health status and geographic location as small group rating factors, clarifying certain other issues relating to small group insurance, and establishing a reinsurance mechanism.

Amend the bill by replacing all after the enacting clause with the following:

1 Duty Added. Amend RSA 420-G:14-c, I to read as follows:

I. There is hereby established a joint legislative oversight committee on small group health insurance reform. ~~[The committee shall review the reports filed by the commissioner pursuant to RSA 420-G:14-a, monitor the small group health insurance market in the state, and monitor the effect of SB 110 of the 2003 legislative session.]~~ The committee shall make recommendations for any legislative changes the committee deems necessary. The committee shall include 3 members of the house, appointed by the speaker of the house and 2 senators, appointed by the president of the senate.

2 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Case characteristics" means demographic or other relevant characteristics of a small employer group that may be considered by the health carrier in the determination of premium rates for that group.

3 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph II the following new paragraph:

II-a. "Composite billing" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's family composition.

4 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph VII the following new paragraph:

VII-a. "Family composition" means health plan membership type, including: enrollee only; enrollee and spouse; enrollee and children; enrollee, spouse, and children; and other similar membership types.

5 Definition Changed. Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the ~~[base]~~ **market** rate through the application of **plan** factors that reflect actuarially demonstrated differences in expected utilization ~~[or cost]~~ **and health care costs** attributable to differences in the coverage design and/or the provider contracts that support the coverage **and by including provisions for administrative costs and loads. The health coverage plan rate is periodically adjusted to reflect expected changes in the market rate, utilization, health care costs, administrative costs, and loads.**

6 Definition Added. Amend RSA 420-G:2, XII-a to read as follows:

XII-a. "**List billing**" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's attained age and the enrolled employee's family composition.

XII-b. "Loss information" means the aggregate claims experience and shall include, but not be limited to, the number of covered lives,

the amount of premium received, the amount of total claims paid, and the claims loss ratio. "Loss information" shall not include any information or data pertaining to the medical diagnosis, treatment, or health status that identifies an individual covered under the group contract or policy. Catastrophic claim information shall be provided as long as the provision of this information would not compromise any covered individual's privacy.

7 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XII-b the following new paragraph:

XII-c. "Market rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans the carrier writes and maintains in a market, including the nongroup individual health insurance market and, separately, the small employer group health insurance market, and which is periodically adjusted by the carrier to reflect changes in actual or anticipated claims.

8 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XIV-a the following new paragraph:

XIV-b. "Premium rate" means the rates used by a carrier to calculate the premium. For group coverage, premium rates shall be expressed as a rate per enrolled employee

9 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XV the following new paragraph:

XV-a. "Rating period" means the time period for which the premium rate charged by a health carrier to an individual or a small employer for a health benefit plan is in effect.

10 Premium Rates. Amend RSA 420-G:4, I(a) to read as follows:

(a) All ~~[premiums]~~ **premium rates** charged shall be guaranteed for a rating period of at least 12 months, ~~[unless otherwise allowed by the commissioner]~~ **and shall not be changed for any reason, including but not limited to a change in the group's case characteristics.**

11 Small Group Insurance; Premium Rates. Amend RSA 420-G:4, I(e) and (f) to read as follows:

(e) In establishing the premium charged, health carriers ~~[providing]~~ **offering** coverage to small employers shall calculate ~~[a rate]~~ **premium rates** that ~~[is]~~ **are** derived from the health coverage plan rate ~~[through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location, and health status]~~ **by making adjustments to reflect one or more case characteristics.** Such ~~[factors]~~ **adjustments from the health coverage plan rate** may be ~~[utilized]~~ **made** only in accordance with the following limitations:

(1) ~~[Carriers may use the attained age of covered persons as a rating factor. However, the maximum premium differential for age as determined by ratio shall be 4 to 1 beginning with age 19].~~ **In establishing the premium rates, health carriers offering coverage to small employers may use only age, group size, and industry classification as case characteristics. No consideration shall be given to health status, claim experience, duration of coverage, geographic location, or any other characteristic of the group.**

(2) Carriers ~~[modifying such average premium]~~ **making adjustments from the health coverage plan rate** for age may do so only by using the following age brackets:

0 - 18
19 - 24
25 - 29
30 - 34
35 - 39
40 - 44
45 - 49
50 - 54
55 - 59
60 - 64
65 +

(3) ~~Carriers may use group size as a rating factor. However, the highest factor based on group size shall not exceed the lowest factor based on group size by more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor.~~

(4) ~~Carriers may use the small employer group's industry classification as a rating factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than 20 percent.~~

(5) ~~Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.~~

(6) ~~Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:~~

~~(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.~~

~~(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.~~

~~(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.~~

~~(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons.] *The maximum premium rate differential after adjusting for all case characteristics as determined by ratio shall be 3.5 to 1. This limitation shall not apply for determining premium rates for covered persons whose attained age is less than 19.*~~

~~(4) *In establishing the premium rates, health carriers offering coverage to small employers may make further adjustments based on family composition.*~~

~~(5) *The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group as well as family composition. No small employer health carrier shall inquire regarding health status or claims experience of the small employer or its employees or dependents until after the premium rates have been agreed upon by the carrier and the employer.*~~

(6) Carriers may calculate premium rates using either list billing or composite billing. Carriers shall use the same billing method in all succeeding rating periods unless the small employer agrees to allow the carrier to change the methodology.

(7) The percentage increase in the premium rates used by a health carrier for a new rating period shall not exceed 20 percent of the premium rates used by that carrier in the preceding rating period. Such rate increase limitation shall not include any premium rate increase that is based on changes in the health coverage plan rate.

(f) Each rating factor that a carrier chooses to utilize ***in the individual market*** shall be reflective of claim cost variations that correlate with that factor independently of claim cost variations that correlate with any of the other allowable factors.

12 Medical Underwriting. Amend RSA 420-G:5, I to read as follows:

I. Health carriers providing health coverage for individuals [~~or small employer groups~~] may perform medical underwriting, including the use of health statements or screenings or the use of prior claims history, to the extent necessary to establish or modify premium rates as provided in RSA 420-G:4. The commissioner may allow group carriers to use standardized health statements. ***Small group carriers may use the standard reinsurance underwriting form for their reinsurance ceding decisions to the New Hampshire small employer health reinsurance pool, established in RSA 420-K:2, after premium prices have been agreed upon by the carrier and the small employer.***

13 New Chapter; Small Employer Health Reinsurance Pool. Amend RSA by inserting after chapter 420-J the following new chapter:

CHAPTER 420-K

SMALL EMPLOYER HEALTH REINSURANCE POOL

420-K:1 Definitions. In this chapter:

I. "Assessment" means the liability of the member insurer to the reinsurance pool.

II. "Board" means the board of directors of the small employer health reinsurance pool.

III. "Commissioner" means the insurance commissioner.

IV. "Covered lives" means "covered lives" as defined in RSA 404-G:2, V.

V. "Health carrier" means any entity licensed pursuant to RSA 402, RSA 420-A, or RSA 420-B that delivers, issues for delivery or maintains in force policies of health insurance in New Hampshire.

VI. "Health insurance" means "health insurance" as defined in RSA 404-G:2, VII.

VII. "Plan of operation" means the plan of operation of the small employer health reinsurance pool, including articles, bylaws and operating rules, procedures and policies approved by the commissioner and adopted by the pool.

VIII. "Pool" means the small employer health reinsurance pool.

IX. "Small employer" means "small employer" as defined in RSA 420-G:2, XVI.

X. "Standard health benefit plan" means a health benefit plan developed pursuant to RSA 420-K:4, I.

420-K:2 Establishment of the Pool.

I. There is established a nonprofit entity to be known as the "New Hampshire small employer health reinsurance pool." All health carriers, writers of health insurance, and other insurers issuing or maintaining health insurance in this state shall be members of the pool.

II. On or before July 1, 2005, the commissioner shall give notice to all members of the pool of the time and place for the initial organizational meeting, which shall take place by July 15, 2005. The members shall select the initial board, subject to approval by the commissioner. The board shall consist of at least 5 and not more than 9 representatives of members. There shall be no more than one board member representing any one member company. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The vote shall be proportional to the member's covered lives. To the extent possible, at least 2/3 of the members of the board shall be small employer health carriers. At least one member shall be a small employer health carrier with less than \$100,000,000 in net small employer health insurance premium in this state. The commissioner, or designee, shall be an ex-officio member of the board. In approving selection of the board, the commissioner shall assure that all members are fairly represented. The membership of all boards subsequent to the initial board shall be approved by the commissioner and shall, to the extent possible, reflect the same distribution of representation as is described in this paragraph.

III. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the initial board within 15 days of the organizational meeting.

IV. Within 60 days after the appointment of such initial board, the board shall submit to the commissioner a plan of operation and thereafter any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing, approve the plan of operation provided he or she determines it to be suitable to assure the fair, reasonable, and equitable administration of the pool, and provides for the sharing of pool gains or losses on an equitable proportionate basis in accordance with the provisions of paragraph VI of this section. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this section shall be made available. If the board fails to submit a suitable plan of operation within 60 days after its appointment, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall, after notice and hearing, adopt and promulgate a plan of operation or amendments no later than October 1, 2005. The commissioner shall amend any plan adopted by him or her, as necessary at the time a plan of operation is submitted by the board and approved by the commissioner.

V. The board shall select reinsurance pool administrators through a competitive bidding process to administer the pool. The board shall evaluate bids submitted based on criteria established by the board. Each month, total payments to administrators shall not exceed the larger of \$2,500 or an amount equal to \$10 per life for which the reinsurance pool has any potential claims liability.

VI. The plan of operation shall establish procedures for:

(a) Handling and accounting of assets and moneys of the pool, and for annual fiscal reporting to the commissioner.

(b) Filling vacancies on the board, subject to the approval of the commissioner.

(c) Selecting an administrator and setting forth the powers and duties of the administrator.

(d) Reinsuring risks in accordance with the provisions of this chapter.

(e) Collecting assessments from all members to provide for claims reinsured by the pool and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made.

(f) Any additional matters at the discretion of the board.

420-K:3 Powers of the Pool.

I. The pool shall have the general powers and authority granted under the laws of New Hampshire to insurance companies licensed to transact health insurance.

II. In addition, the pool shall have the specific authority to:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter, including the authority, with the approval of the commissioner, to enter into contracts with programs of other states for the joint performance of common functions, or with persons or other organizations for the performance of administrative functions.

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members.

(c) Take such legal action as necessary to avoid the payment of improper claims against the pool.

(d) Define the array of health coverage products for which reinsurance will be provided, and to issue reinsurance policies, in accordance with the requirements of this chapter.

(e) Establish rules, conditions, and procedures pertaining to the reinsurance of members' risks by the pool.

(f) Establish appropriate rates, rate schedules, rate adjustments, rate classifications, and any other actuarial functions appropriate to the operation of the pool.

(g) Assess members in accordance with the provisions of this chapter, and to make advance interim assessments as may be reasonable and necessary for organizational and interim operating expenses. Any such interim assessments shall be credited as offsets against any regular assessments due following the close of the fiscal year.

(h) Appoint from among the members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool.

(i) Borrow money to effectuate the purposes of the pool. Any notes or other evidence of indebtedness of the pool not in default shall be legal investments for insurers and may be carried as admitted assets.

(j) Develop a standard health benefit plan.

420-K:4 Standard Health Benefit Plan.

I. The board shall:

(a) Develop a standard health benefit plan which shall contain benefit and cost sharing levels that reflect the health coverages most commonly sold by small employer carriers in the state.

(b) Develop base reinsurance premium rates for the standard health benefit plan. The base reinsurance premium rates shall be set at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan. The base premium rates shall be subject to approval of the commissioner.

(c) Establish a methodology for determining premium rates to be charged by the pool to reinsure small employer groups and individuals.

The methodology shall include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in establishing premium rates.

II. The standard health benefit plan, base reinsurance premium rates and the rating methodology shall be submitted to the commissioner for approval within 45 days after the appointment of the board and shall subsequently be revised as necessary and appropriate.

420-K:5 Eligibility, Coverage, and Rates. Beginning January 1, 2006, members may reinsure with the pool health coverage provided to small employers as follows:

I. The pool shall reinsure the level of coverage provided up to, but not exceeding, the level of coverage provided in the standard health benefit plan or the actuarial equivalent thereof as defined and authorized by the board.

II. The pool shall not reimburse a ceding carrier with respect to claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for such employee or dependent of at least \$5,000 in a calendar year for benefits covered by the standard health benefit plan. The amount of the deductible shall be periodically reviewed by the board and may be adjusted upward as determined by the board.

III. A member may reinsure an entire small employer group within a period of 60 days following the small employer's health insurance policy issue or renewal date.

IV. A member may reinsure an eligible employee or dependent of a small employer group within a period of 60 days following the small employer's health insurance policy issue or renewal date.

V. A member may reinsure a newly eligible employee or dependent of a small employer group within a period of 60 days following the commencement of his or her coverage.

VI. Reinsurance coverage may be terminated for each reinsured employee or dependent on any plan anniversary.

VII. Reinsurance of newborn dependents shall be allowed only if the mother of any such dependent is reinsured as of the date of birth of such child, and all newborn dependents of reinsured persons shall be automatically reinsured as of their date of birth.

VIII. Notwithstanding the provisions of paragraphs III and IV:

(a) Coverage for eligible employees and their dependents provided under a group policy covering 2 or more small employers shall not be eligible for reinsurance when such coverage is discontinued and replaced by a group policy of another carrier covering 2 or more small employers, unless coverage for such eligible employees or dependents was reinsured by the prior carrier; and

(b) At the time coverage is assumed for such group by a succeeding carrier, such carrier shall notify the pool of its intention to provide coverage for such group and shall identify the employees and dependents whose coverage will continue to be reinsured. The time limitations for providing such notice shall be established by the pool.

IX. The board, as part of the plan of operation, shall establish a methodology for determining premium rates to be charged for reinsuring small employers and individuals. The methodology shall include a system for classification of small employers that reflects the way case characteristics are commonly used by small employer carriers in the state. Pool reinsurance premiums shall be established at the following percentages of the base reinsurance premium rate established by the pool for that classification of small employers with similar case characteristics:

(a) An entire small employer group consisting of 2 or more employees may be reinsured for a rate that is 150 percent of the applicable base reinsurance premium rate for the group established pursuant to RSA 420-K:4, II; and

(b) An eligible employee or dependent may be reinsured for a rate that is 500 percent of the applicable base reinsurance premium rate for the individual established pursuant to RSA 420-K:4, II.

X. On or before December 1, 2005, the board shall establish, subject to the approval of the commissioner, a standard reinsurance underwriting form for use by small employer carriers in ceding risks to the pool. The form may be amended from time to time as the board deems necessary, subject to the approval of the commissioner.

420-K:6 Assessments.

I. Following the close of each fiscal year, the administrator shall determine the net premiums, the pool expenses of administration and the incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(a) Each member's assessment for the reinsurance pool shall be based on its number of covered lives times a specified assessment rate. The board of directors shall specify the basis used to set the assessment rate. The board of directors shall establish a regular assessment rate, which shall be:

(1) Calculated on a calendar year basis based on the net losses from the audited financial statements of the prior fiscal year;

(2) Established no later than November 1 in the current fiscal year; and

(3) Anticipated to be sufficient to meet the pool's funding needs.

(b) In addition to the regular assessment rate, the board may establish a special assessment rate for organizational expenses. Notwithstanding RSA 420-G:4, a writer of health insurance may increase the premiums charged by the amount of the special assessment. Any assessment may appear as a separate line item on a policyholder's bill.

(1) The board shall only establish an interim assessment if the board determines that its funds are or will become insufficient to pay the reinsurance pool's expense in a timely manner.

(2) The regular assessment rate, and any special assessment rate, shall be subject to the approval of the commissioner. The commissioner shall approve the rate if he or she finds that the amount is required to fulfill the purpose of the reinsurance pool. For the purpose of making this determination, the commissioner may, at the expense of the pool, seek independent actuarial certification of the need for the proposed rate.

(c) The board shall impose and collect assessments on members of the pool.

(d) If the assessment exceeds the amount actually needed, the excess shall be held and invested and, with the earnings and interest thereon, be used to offset future net losses. Each covered life shall be included in the assessment on an aggregate basis and procedures shall be maintained to ensure that no covered life is counted more than once.

II. Provision shall be made in the plan of operation for the imposition of an interest penalty for late payment of assessments.

III. The board may defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual

obligations. In the event an assessment against a member insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in this chapter. The member insurer receiving such deferral shall remain liable to the pool for the amount deferred. The board may attach appropriate conditions to any such deferral.

420-K:7 Immunity and Indemnification.

I. Neither the participation in the pool as members, the establishment of rates, forms, or procedures, nor any other joint or collective action required by this chapter shall be the basis of any legal action against the pool or any of its members.

II. Any person or member made a party to any action, suit, or proceeding because the person or member served on the board or on a committee or was an officer or employee of the pool shall be held harmless and be indemnified by the program against all liability and costs, including the amounts of judgments, settlements, fines or penalties, and expenses and reasonable attorney's fees incurred in connection with the action, suit, or proceeding. The indemnification shall not be provided on any matter in which the person or member is finally adjudged in the action, suit or proceeding to have committed a breach of duty involving gross negligence, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of office. Costs and expenses of the indemnification shall be prorated and paid for by all members. The commissioner may retain actuarial consultants necessary to carry out his or her responsibilities pursuant to this chapter and such expenses shall be paid by the pool established in this chapter.

14 Repeal. RSA 420-G:4, I(e)(7), relative to increasing the premium rate for small employers at successive rating periods, is repealed.

15 New Hampshire Small Employer Health Reinsurance Pool; Ceding at Renewal Restricted. Amend RSA 420-K:5, III and IV to read as follows:

III. A member may reinsure an entire small employer group within a period of 60 days following the small employer's health insurance policy issue [~~or renewal~~] date.

IV. A member may reinsure an eligible employee or dependent of a small employer group:

(a) Within a period of 60 days following the small employer's health insurance policy issue [~~or renewal~~] date; **or**

(b) *On the first plan anniversary after the coverage has been in effect for a period of 3 years, and every third plan anniversary thereafter; provided, that reinsurance pursuant to this subparagraph shall only be permitted with respect to eligible employees and their dependents of a small employer which has no more than 5 eligible employees as of the applicable anniversary.*

16 Reference Change. Amend RSA 420-G:4, I(b) to read as follows:

(b) [~~Base rate~~] **Market rate** shall be established by each health carrier for all of its health coverages offered to individuals and, separately, for all of its health coverages offered to small employers.

17 Effective Date.

I. Section 1 of this act shall take effect upon its passage.

II. Section 13 of this act shall take effect July 1, 2005.

III. Sections 14 and 15 of this act shall take effect January 1, 2007.

IV. The remainder of this act shall take effect January 1, 2006.

2005-1647s**AMENDED ANALYSIS**

This bill changes the duties of the joint legislative oversight committee on small group health insurance reform.

This bill also makes certain changes in the small employer health insurance law, including:

I. Repealing health status and geographic location as rating factors for small group health insurance.

II. Adding a definition of case characteristics and certain other definitions.

III. Clarifying overall premium rate variability in the small group health insurance market.

IV. Clarifying the small group health insurance law regarding premium rates for small employer groups with similar case characteristics.

V. Establishing the New Hampshire small employer health reinsurance pool to offer pool coverage to eligible employees of small employers.

SENATOR HASSAN: Okay. It is floor amendment 1647s. Thank you, Mr. President. And the floor amendment does two things. It removes the current text of 611-FN which differs from the Senate position that was adopted under Senate Bill 125. So this floor amendment replaces the content of 611-FN with the language that we passed with SB 125. It also provides for an oversight committee to continue to oversee and study the small group health insurance market. That is a provision that was in neither SB 125, which we passed last month, nor was it in 611. So I would urge my colleagues to pass the floor amendment. Thank you.

PARLIAMENTARY INQUIRY

SENATOR LARSEN: Mr. President, I believe that this is a valuable floor amendment and, as a parliamentary inquiry, I am wondering if the intention is to send House Bill 611-FN as amended by 1647 to Finance?

SENATOR EATON (In the Chair): We would have to send it to Finance, but we passed the time, and I was under the understanding that it was going to be put back on the table.

SENATOR LARSEN: Further parliamentary inquiry? Is today not the last day to take "FN" bills into Finance? All bills with an "FN" have to go into Finance today or if they were tabled, would not be able to go.

SENATOR EATON (In the Chair): They would not be able to. Yes, so this would be the last day.

SENATOR LARSEN: So is it your intent to send this amendment to Finance?

SENATOR EATON (In the Chair): It would have to go to Finance.

Floor amendment adopted.

Senator Flanders offered a floor amendment.

Sen. Flanders, Dist. 7

May 25, 2005

2005-1627s

01/09

Floor Amendment to HB 611-FN

Amend the title of the bill by replacing it with the following:

AN ACT repealing geographic location as a small group rating factor and limiting overall premium rate variability in the small group health insurance market.

Amend the bill by replacing all after the enacting clause with the following:

1 Small Group Health Insurance; Definitions Added. RSA 420-G:2, I is repealed and reenacted to read as follows:

I. "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the commissioner that a small employer health carrier is in compliance with the provisions of and the rules adopted by the commissioner, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer health carrier in establishing premium rates for applicable health benefit plans.

I-a. "Case characteristics" means demographic or other relevant characteristics of a small employer group that may be considered by the health carrier in the determination of premium rates for that group.

2 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph II the following new paragraph:

II-a. "Composite billing" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's family composition.

3 Definition Changed. Amend RSA 420-G:2, IX-a to read as follows:

IX-a. "Health coverage plan rate" means a rate that is uniquely determined for each of the coverages or health benefit plans a health carrier writes and that is derived from the ~~[base]~~ **market** rate through the application of **plan** factors that reflect actuarially demonstrated differences in expected utilization ~~[or cost]~~ **and health care costs** attributable to differences in the coverage design and/or the provider contracts that support the coverage **and by including provisions for administrative costs and loads. The health coverage plan rate is periodically adjusted to reflect expected changes in the market rate, utilization, health care costs, administrative costs, and loads.**

4 Definition Added. Amend RSA 420-G:2, XII-a to read as follows:

XII-a. "**List billing**" means a method of calculating premium rates for small employer groups in which each enrolled employee's rate varies only by the enrolled employee's attained age and the enrolled employee's family composition.

XII-b. "Loss information" means the aggregate claims experience and shall include, but not be limited to, the number of covered lives, the amount of premium received, the amount of total claims paid, and the claims loss ratio. "Loss information" shall not include any information or data pertaining to the medical diagnosis, treatment, or health status that identifies an individual covered under the group contract or policy. Catastrophic claim information shall be provided as long as the provision of this information would not compromise any covered individual's privacy.

5 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XII-b the following new paragraph:

XII-c. "Market rate" means a single rate reflecting the carrier's average cost of actual or anticipated claims for all health coverages or health benefit plans the carrier writes and maintains in a market, including the nongroup individual health insurance market and, separately, the small employer group health insurance market, and which is periodically adjusted by the carrier to reflect changes in actual or anticipated claims.

6 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XIV-a the following new paragraph:

XIV-b. "Premium rate" means the rates used by a carrier to calculate the premium. For group coverage, premium rates shall be expressed as a rate per enrolled employee.

7 New Paragraph; Definition Added. Amend RSA 420-G:2 by inserting after paragraph XV the following new paragraph:

XV-a. "Rating period" means the time period for which the premium rate charged by a health carrier to an individual or a small employer for a health benefit plan is in effect.

8 Premium Rates. Amend RSA 420-G:4, I(a) to read as follows:

(a) All ~~[premiums]~~ **premium rates** charged shall be guaranteed for a rating period of at least 12 months, ~~[unless otherwise allowed by the commissioner]~~ **and shall not be changed for any reason, including but not limited to a change in the group's case characteristics.**

9 Small Group Insurance; Premium Rates. Amend RSA 420-G:4, I(e) to read as follows:

(e) In establishing the premium charged, health carriers ~~[providing]~~ **offering** coverage to small employers shall calculate ~~[a rate]~~ **premium rates** that ~~[is]~~ **are** derived from the health coverage plan rate ~~[through the application of rating factors that the carrier chooses to utilize for age, group size, industry classification, geographic location, and health status]~~ **by making adjustments to reflect one or more case characteristics.** Such ~~[factors]~~ **adjustments from the health coverage plan rate** may be ~~[utilized]~~ **made** only in accordance with the following limitations:

(1) ~~[Carriers may use the attained age of covered persons as a rating factor. However, the maximum premium differential for age as determined by ratio shall be 4 to 1 beginning with age 19].~~ **In establishing the premium rates, health carriers offering coverage to small employers may use only age, group size, industry classification, health status, claims experience, and duration of coverage as case characteristics. No consideration shall be given to geographic location or any other characteristic of the group.**

(2) Carriers ~~[modifying such average premium]~~ **making adjustments from the health coverage plan rate** for age may do so only by using the following age brackets:

0 - 18
19 - 24
25 - 29
30 - 34
35 - 39
40 - 44
45 - 49
50 - 54
55 - 59
60 - 64
65 +

(3) ~~[Carriers may use group size as a rating factor. However, the highest factor based on group size shall not exceed the lowest factor based on group size by more than 20 percent; provided that for groups of one, an additional 10 percent rating factor shall be allowed from the highest factor.]~~

(4) Carriers may use the small employer group's industry classification as a rating factor. However, the highest factor based on industry classification shall not exceed the lowest factor based on industry classification by more than 20 percent.

(5) Carriers may use the small employer group's geographic location as a rating factor. However, the highest factor based on geographic location shall not exceed the lowest factor based on geographic location by more than 15 percent.

(6) Carriers may use the health status of the small employer group as a rating factor. However, the application of a health status factor shall be subject to the following limitations:

(A) The health status factor may reflect health status of covered persons, the small employer's claim experience, or the duration of coverage since health statements were last provided.

(B) Variations from the arithmetic average of the highest rate charged to the lowest rate charged shall not exceed 25 percent.

(C) Upon the renewal of a small employer policy, any increase in the premium rate that is solely attributable to changes in the health status factor from the prior year shall be no more than 15 percent.

(7) Upon the renewal of a small employer policy, a carrier is prohibited from increasing the premium rate by more than 25 percent of the rate that was charged in the preceding year. Such rate increase limitation shall not include any premium rate increase that is based on a carrier's annual cost and utilization trends or changes in the rating factor for attained age of covered persons. *The maximum premium rate differential after adjusting for all case characteristics as determined by ratio shall be 4 to 1 for a covered person whose attained age is greater than 18. For groups of one the maximum premium rate differential of 4 to 1 may be increased by an additional 10 percent.*

(4) *In establishing the premium rates, health carriers offering coverage to small employers may make further adjustments based on health plan membership type.*

(5) *The small employer health carrier shall set premium rates to small employers after consideration of case characteristics of the small employer group as well as the health plan membership type.*

(6) *Carriers may calculate premium rates using either list billing or composite billing. Carriers shall use the same billing method in all succeeding rating periods unless the carrier has provided the small employer notice of the change in billing method and a renewal quote using the new rating methodology at least 60 days prior to the end of the rating period.*

(7) *The percentage increase in the premium rates for a new rating period shall not exceed 15 percent of the premium rates used by that carrier in the preceding rating period. Such rate increase limitation shall not include any premium rate increase that is based on changes in the health coverage plan rate.*

10 Reference Change. Amend RSA 420-G:4, I(b) to read as follows:

(b) [Base rate] **Market rate** shall be established by each health carrier for all of its health coverages offered to individuals and, separately, for all of its health coverages offered to small employers.

11 Legislative Oversight Committee. Amend RSA 420-G:14-c, I to read as follows:

I. There is hereby established a joint legislative oversight committee on small group health insurance reform. The committee shall review the reports filed by the commissioner pursuant to RSA 420-G:14-a, monitor the small group health insurance market in the state, and monitor the [effect of SB 110 of the 2003 legislative session] **effects of small group health insurance reform**. The committee shall make recommendations

for any legislative changes the committee deems necessary. The committee shall include 3 members of the house, appointed by the speaker of the house and 2 senators, appointed by the president of the senate.

12 Effective Date. This act shall take effect January 1, 2006.

2005-1627s

AMENDED ANALYSIS

This bill makes certain changes in the small employer health insurance law, including:

I. Repealing geographic location as a rating factor for small group health insurance.

II. Adding a definition of case characteristics and certain other definitions.

III. Limiting overall premium rate variability in the small group health insurance market.

SENATOR FLANDERS: Mr. President, I offer an amendment, 1627s. As we all know, a lot of things have happened since the day of the hearing that we had several months ago, where the amendment was presented with the thirteen names on it. A lot of people have testified and we have had day-long hearings and so forth. I would just like to recap some of those things and what this amendment does. This amendment, briefly, stabilizes the transition from Senate Bill 110 with a 4-1 compromised, composite band. Very importantly, it eliminates the business tax contained in 125. If we have a surcharge on every insured life, it is about \$18 million. I don't know if you want to call it a fee or you want to call it a tax, but each small business is going to pay for each insured life and every large business is going to pay for insured life. This amendment maintains a fifteen percent renewal cap and will maintain a competitive small health insurance market in the industry. Let me...I have been accused that I am doing this because it is good for the insurance companies. One of the reasons I wanted to present this amendment is to show you that it is not. If I could ask that this be passed out, I would like to refer to, if I may. This is a survey that was taken on May 4th. I am sure that you have all seen it, but I want you to see it again. I want you to know that I represent a small business and every Senator in this chamber has small business in their district. The National Federation of Independent Business located in Concord, New Hampshire did a survey and 72 percent of small businesses do not want to go back to community rating. Now, why aren't we listening to the small business? Are we listening to somebody out here, or are we listening to somebody out here? We are representing small business. If we pass composite band, if we don't pass something that looks like my amendment...I want to show you what we are doing to small business. This! Small businesses are the ones that are paying the bills. Small businesses do not want to go community rating. Read that, 72 percent of the people, and this is what we're doing. I also want to pass out because I have been told, hearing after hearing, "your 110 didn't do anything. No company came in and amounted to anything. They're all small businesses and they're not doing anything." Well last I knew there were eight or nine new businesses in **TAPE INAUDIBLE** because of 110. I would like to pass out this letter if I may. I want you to all see this. Aetna, the third largest insurance company in the United States, will come to New Hampshire if we don't pass composite band. Ladies and gentlemen, this is a company that can give Anthem some competition. You don't want new business to come in, then go ahead, vote 125. If you want the old business that we got here,

you want them to leave, go ahead, but I'll tell you what you've done to competition. If you pass composite band, you've done this to competition. Go on, go on ladies and gentlemen, to the ATM machine, for Anthem is back. Please read this. Please look at it. Please consider it. It does great things. It holds the growth of premium to ten and twenty percent according to the charts that have been received. I really and truly think that we are going to defeat ourselves if we go against the actual people we think we are helping, which is smaller business, who again, tells us, 72 percent of them, do not want 125. Please look at this. Please look at it. If you don't like it, fine, vote it down and go to your 125. But here's an opportunity to help the small businesses. Here's an opportunity to get control of the growth of insurance premium. And anybody tells you that we are going to lower growth premiums, I don't believe it. But this amendment, according to all that I've seen and all I've asked people to do for me, reduces the growth of the premium. Thank you for listening.

SENATOR HASSAN: Thank you, Mr. President, and thank you, Senator Flanders, for taking my question. Senator Flanders, does your amendment allow health insurers to use health status as a rating factor?

SENATOR FLANDERS: Yes it does.

SENATOR HASSAN: And follow up if I may? Are you aware, Senator Flanders, that in the recent House hearings on Senate Bill 125, both Patriot Insurance and MVP two new players who are actually trying to establish business in this state, testified that they would prefer not to have health status rating?

SENATOR FLANDERS: I did not know that, but I would believe it. But if I may, you also have health status to 125 only it's an after fact, isn't it?

SENATOR HASSAN: After the fact it cannot affect premium rates.

SENATOR FLANDERS: Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator, I noticed this letter was addressed to Paula Rogers. Was that...

SENATOR FLANDERS: She presented it.

SENATOR GATSAS: She presented it?

SENATOR FLANDERS: She presented it for Aetna.

SENATOR GATSAS: She was the old Insurance Commissioner?

SENATOR FLANDERS: That's right.

SENATOR GATSAS: Who was in that position when the catastrophic...

SENATOR FLANDERS: She was representing Devine, Millimet.

SENATOR GATSAS: When the catastrophic situation of 110 came into legislation?

SENATOR FLANDERS: Yes, she was.

SENATOR GATSAS: Thank you. Follow up? Thank you. Aetna, a pretty big company.

SENATOR FLANDERS: Third largest in the United States.

SENATOR GATSAS: Do they do business in Connecticut?

SENATOR FLANDERS: I don't know.

SENATOR GATSAS: Would you believe if I told you they do business in Connecticut and there is a band down there, and they're operating?

SENATOR FLANDERS: A band? I don't know what you mean by band. I said community rating.

SENATOR GATSAS: There's a modified community rating in Connecticut.

SENATOR FLANDERS: Yes, there is.

SENATOR GATSAS: Follow up? John Alden, one of the companies that told you was going to leave the state of New Hampshire. Would you believe if I told you they do business in Connecticut with a modified community rating?

SENATOR FLANDERS: If you tell me, I'll believe it. I didn't go to Connecticut to check it out. I know what they told me at my hearing, and I know what they said in the House hearing.

SENATOR GATSAS: Thank you.

SENATOR GALLUS: Thank you, Mr. President. Senator Flanders, are you aware that the NFIB offers their members insurance products?

SENATOR FLANDERS: I don't know what you mean. You mean, self insurance?

SENATOR GALLUS: They offer insurance, health care insurance through this organization.

SENATOR FLANDERS: Through self insurance?

SENATOR GALLUS: Well not self insurance, but a different company.

SENATOR FLANDERS: I did not know that.

SENATOR GALLUS: So they are sort of not in the insurance business, but they are marketing insurance products. 'Cause I know, I've been a member of this organization for the past twenty years or so. I have actually purchased insurance through those guys.

SENATOR FLANDERS: I don't know what that has to do with their opinion that they don't want to go back to community rating.

SENATOR GALLUS: Well just that they're marketing product.

SENATOR ESTABROOK: Thank you, Mr. President. I just wanted to rise to let the record reflect that, to the best of my recollection, close to, if not 100 percent of the contacts I've had from small business regarding this issue, want community rating back.

SENATOR GATSAS: Thank you, Mr. President. I wasn't planning on speaking, but when I hear that we are taxing small business to the tune of \$12 million, I get a little excited and my blood starts to boil.

SENATOR FLANDERS: \$18 million.

SENATOR GATSAS: \$18 million. Thank you, Senator. Well, when somebody tells me it's \$18 million in the state of Connecticut that has a re-insurance pool, that has 3 million people in the state, their total of \$3,000 or \$3,300 lives to the re-insurance pool on claims is \$17 million. So I find it very difficult to understand how we, in the state of New Hampshire, are going to assess \$18 million. So, for some reason we get fabricated numbers. When this first conversation first started, we were talking about two cents per day for covered life. That's what it was going to cost in the state of New Hampshire. That hasn't changed. But again, we all failed to realize one thing. Every insurance company in the state pays an assessment to the high risk pool. Every single one. There's 143 lives,

according to the audited statement that was paid in '03. \$1.5 million in claims that were paid. They have a reserve of \$12 million. \$12 million. I would think that somebody in this state would be asking for an audit of the high risk pool that was put together three years ago. I agree with Senator Flanders. 611 and the bills that we've seen, when you start talking about pre-assessment, ours is on a post-assessment basis, based on the claims that are in the pool. When you arbitrarily charge \$1 to assess people when you don't know what the claims are, you could end up with a \$12 million reserve. I agree. So the work that has been put into this bill has been to protect the small employer, give him an opportunity to get some relief, stabilize rates and find a way that they aren't going to discriminate against employees. Because putting medical underwriting within that bracket still allows an employer to take an employee and decide he's not going to keep him in his workforce. I think that's wrong. Thank you.

SENATOR FULLER CLARK: Senator Gatsas, is it not true that one of the underlying reasons for creating the re-insurance pool was to be able to insure additional competition in the state?

SENATOR GATSAS: We keep talking about competition in the state of New Hampshire. We have 650,000 covered lives in this state. One of the biggest health carriers in the country, in the country, United Health Care, is dormant in this state. They have the opportunity to come in and penetrate this state any time they want. What do they find as a problem? If they come in, if they get twenty percent of the market it's not worth coming here. So when we talk about competition, let's understand one thing. A new company coming in is not going to get the same discounts from the hospitals as the companies that currently are here that have 200,000 or 100,000 lives. They aren't going to get that discount. That is where the rates are set, based on the discounts that the insurance companies get from the hospitals. That's what it is. It is nothing more than that. So when you talk about a new carrier coming in, and we hear about, "Oh, we are going to make these HSAs leave this state." And, "My goodness, we are not offering people anything else." The HSAs, Health Savings Accounts, have been here for eighteen months. If that was the greatest thing since sliced bread, in eighteen months, they'd have more than 267 covered lives. So I guess the answer to your short question and my long answer is yes.

SENATOR HASSAN: Thank you, Mr. President. I just wanted to note for the record, one, I oppose this floor amendment. Two, that the BIA did come in and testify in favor of 125 before the House, and since we have a record that says the NFIB opposes it, I'd like the record to reflect that the BIA supports it. Thank you.

SENATOR FULLER CLARK: Yes. Thank you, Mr. President. Could you clarify which amendment that we are voting on, where we are in this status of legislation on this bill, please?

SENATOR EATON (In the Chair): We are voting on floor amendment 1627s.

SENATOR FULLER CLARK: Thank you.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Bragdon.

Seconded by Senator Gatsas.

The following Senators voted Yes: Johnson, Kenney, Boyce, Flanders, Odell, Eaton, Bragdon, Clegg, Martel, Letourneau.

The following Senators voted No: Gallus, Burling, Green, Roberge, Gottesman, Foster, Larsen, Gatsas, Barnes, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

Yeas: 10 - Nays: 14

Floor amendment failed.

The question is on the adoption of the bill as amended.

A roll call was requested by Senator Gatsas.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Kenney, Burling, Green, Roberge, Gottesman, Foster, Larsen, Gatsas, Barnes, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Boyce, Flanders, Odell, Eaton, Bragdon, Clegg, Martel, Letourneau.

Yeas: 15 - Nays: 9

Adopted.

Referred to the Finance Committee (Rule #26).

HB 696-FN, relative to enhanced penalties for certain crimes against the elderly and persons with disabilities. Judiciary Committee. Re-refer to committee, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move HB 696-FN be re-referred to committee. The bill proposed to have enhanced penalties for crimes against the handicapped and the elderly. The goals of the bill, deterrence and punishment for those who prey on the elderly and disabled, are important goals to reach, but the committee felt it needed additional time to arrive at a proper language for this legislation. We previously re-referred Senator D'Allesandro's bill on the same subject matter and would like to deal with both of these bills and bring them back next year. Thank you very much, Mr. President.

Adopted.

HB 696-FN is re-referred to the Committee on Judiciary.

HB 177, relative to home improvement contracts. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Burling for the committee.

Public and Municipal Affairs

May 18, 2005

2005-1485s

05/10

Amendment to HB 177

Amend RSA 359-G:3, XIII and XIV as inserted by section 1 of the bill by replacing them with the following:

XIII. A requirement that the contractor provide to the customer a current certificate of insurance indicating that, as of the date of commencement of work, the contractor has liability insurance, worker's compensation insurance, if applicable, and automobile insurance. If the contractor does not have such insurance, the contractor shall disclose that information to the customer in writing.

XIV. A warranty statement which reads: "In addition to any additional warranties agreed to by the parties, the home improvement contractor warrants that the work will be free from faulty workmanship, constructed in a skillful manner, carried out with the materials specified by the parties, constructed according to the standards of the building code applicable for this location, and fit for habitation or appropriate use."

SENATOR BURLING: Thank you, Mr. President. I move ought to pass on House Bill 177. Mr. President, ought to pass with amendment. House Bill 177 establishes certain requirements for home improvement contracts, including that they be in writing and that they address contract price, the work to be completed, and the estimated date of completion. The bill provides that a violation of the chapter regulating home improvement contracts is prima facie evidence of a violation of the Consumer Protection Act. It also establishes a separate fund for civil penalties collected by the Department of Justice. Mr. President, at the risk of feeling as I do right now, a little like Wylie Coyote in a suit, waiting for the ACME Dynamite Company to arrive, this bill actually came to us as the end result of a lot of hard work by the home contractors. The people of interest around this dispute have been struggling with this issue for a year. They told us they were doing it. They did it. They brought it to us. And this little amendment, which we offer on page eight of the Senate Calendar, is something they wanted to include. It simply said that the contractor would provide a current certificate of insurance so that people would know what kind of insurance the contractor carried. It also specified the warranties which were being made by the home contractor, in a clear, unequivocal, and as far as the home contractors were concerned, a very appropriate way. I understand there is at least a rumor of dark clouds on the horizon, but I do want to tell you, this really had the support of everybody in the room. At the time, we were under the misapprehension that we'd done a really good thing. I'd sure like to find out what we did wrong.

SENATOR BARNES: Thank you, Mr. President. Question of Senator Burling. To answer your question, I guess. You put a lot of work into this and I sit on the committee with you and we did have an agreement. We worked very hard. We had both sides work very hard on this. To answer your question, why the coyote and the dynamite truck are coming? Because one of our members took a look at it and had some real problems with it. And we thought that, in fairness to him, to have a better look at it, that we could send it back to our committee to take another look at it and get him involved with the conversation also. He is a small businessman and we thought that he should be able to get his oar in. The reason he hasn't been following this is that he has been kind of busy goofing off on another committee that has been kind of busy.

SENATOR BURLING: I thank you for that. Of course, if there be another Senator who needs time to understand what we are doing, I am standing here because I believe everyone in this room ought to know that the people who are responsible for finding this compromise, worked very hard to get here. This is not your committee imposing anything on anybody. It is a group of people who made a concerted effort to find a way to come together to protect the consumers of the state of New Hampshire, so many of whom have been injured in fraudulent home contracting stuff. So, if somebody needs some time to get involved, but my problem is this is an FN bill, is it not?

SENATOR BARNES: The Senate President is going to have to handle that one.

SENATOR BURLING: Did we not hear early that it was going to be taken to Finance? I believe the chairman of Finance said he was...even though it bore no FN at this point, that he was going to call it.

SENATOR BARNES: The chairman's going to have to clear that up.

SENATOR EATON (In the Chair): I'll clear that up with the chairman, but Senator Barnes, you had a follow up?

SENATOR BARNES: My question to you was, is it okay, under those circumstances that you can make another motion of re-refer to this committee? Are you agreeable to that?

SENATOR BURLING: Yes. I will make any motion that's consistent with comity, that's with an "i". I just don't want to lose the bill. After the "m", before the "t".

SENATOR BARNES: Senator, the conversation that we have had with this Senator, it's not to kill the bill, it's just to address some of his concerns.

SENATOR BURLING: Alright. For the encouragement of my betters, I will move re-refer to committee.

SENATOR EATON (In the Chair): We would have to vote down. That's an equal motion, so we would have to vote that down. Senator Morse has the floor now.

SENATOR BURLING: Okay.

SENATOR MORSE: Just let me understand the parliamentary situation. I thought we were recommitting this bill. I will speak to that motion. Is that the motion on the floor right now?

SENATOR EATON (In the Chair): Recommit is a higher motion. And, if you make that motion, yes.

SENATOR MORSE: I will make the motion to recommit and like to speak to my motion.

PARLIAMENTARY INQUIRY

SENATOR BOYCE: Is recommit a proper motion though this late in the session? Sending it back to the committee...

SENATOR EATON (In the Chair): Re-refer to committee is one motion, recommit is another motion.

SENATOR BOYCE: Right, but recommit at this point in the session, there's no time left to...I am just...it's just a question.

SENATOR EATON (In the Chair): Hold on a second. We have just had a motion to recommit. That means it will go back in and come out in January. Re-refer to committee...Okay, Senator, which did you ask for?

SENATOR MORSE: My intention is for this to come back out in January and I'd like to speak to why. If you tell me which motion...

SENATOR EATON (In the Chair): That's re-refer.

SENATOR MORSE: So we wouldn't be able to offer that until we vote down...

SENATOR EATON (In the Chair): No, re-refer is a higher motion.

SENATOR MORSE: Okay.

MOTION TO TABLE

Senator Barnes moved to have HB 177 laid on the table.

Adopted.

LAID ON THE TABLE

HB 177, relative to home improvement contracts.

HB 239-FN, relative to registration of shampoo assistants by the board of barbering, cosmetology and esthetics. Public and Municipal Affairs Committee. Inexpedient to legislate, Vote 3-0. Senator Barnes for the committee.

SENATOR BARNES: Thank you, Mr. President. I move House Bill 239 inexpedient to legislate. House Bill 239 is not necessary under current law. It is only adding a licensing procedure where one is not needed. We already license barbers, cosmetologists and shampooists; there is no need to license a shampoo assistant. The Public and Municipal Affairs Committee recommends a vote of inexpedient to legislate, unanimously. We appreciate your help on this because we think it really is unnecessary. Thank you.

SENATOR LARSEN: I rise briefly to oppose the inexpedient to legislate. The committee heard that the cosmetologists of this state had asked...a number of cosmetologists had asked to be able to hire shampooist assistants. Under current law, the shampoo assistant cannot...no one other than a barber or cosmetologists is licensed to shampoo. These are entry level jobs. They are oftentimes jobs that would allow someone who is perhaps interested in entering the field of cosmetology to have some exposure to the field. These are jobs which in fact non-speaking...non-English speaking people could do. There are many other states that allow it. Our current statutes prohibit shampoo assistants. In JLCAR, they tried to bring in a licensing amendment...a licensing rule, and were prohibited from doing that because the statutes do not include shampoo assistants. All I say is these are jobs for people who may in fact, be able to keep a family going, perhaps at minimum wage, but at least they would get some income from it. I think it is wrong to ITL this bill. That's why I oppose it.

SENATOR FOSTER: Senator Barnes, I guess, who brought the bill out, or Senator Larsen. My question for one of you is, do we currently license shampooists or not because I guess I am confused about that? I thought we had a bill or something come through that indicated that we don't, but I think the blurb that we heard said that we do. So I just want clarification on that.

SENATOR LARSEN: No. In the Joint Committee on Legislative Rules, we...they, the barbering cosmetology board attempted to bring in licensing of shampoo assistants with a small fee attached. They would have also had some regulations about what they had to do to become trained to shampoo and perhaps recognize some conditions of the hair. It is a pretty unskilled job, but...and it was a very low fee. When JLCAR looked at that, the staff recognized that it is not under law. Our statutes do not permit shampoo assistants to exist in New Hampshire. In essence, the only people permitted to shampoo hair are licensed barbers and cosmetologists. If any of you like your hair cutters or you have trouble getting into them, it might be a little simpler to get into them if there could be the people who do the lower level job of simply shampooing hair. It is hard to believe we are having this high level debate, but it is in fact, a

job for people that...and it would expand the abilities of barbers and cosmetologists to serve more people. Currently, they...only barbers and cosmetologists can shampoo hair.

SENATOR FOSTER: So a brief follow up. So, we would be helping hair-dressers and barbers and so forth in their business, to pass this, so that they could run a more efficient shop?

SENATOR LARSEN: Exactly. I understood that many of them supported this bill. I am not understanding why this bill is coming out inexpedient to legislate.

SENATOR FOSTER: Thank you.

SENATOR BOYCE: Senator Larsen.

SENATOR LARSEN: I did wash my hair last night and I wasn't licensed.

SENATOR BOYCE: I did this morning. My question is, why do we need to have this as a registered licensed person where all I think we really need to do is simply define the shampoo assistant as this person that does these things and say they don't need a license. If this bill simply said that, I think it would probably sail through. That way we wouldn't be asking somebody who is going to be making, maybe minimum wage, to pay a fee and take a test, and do whatever else is, you know, established here, to simply say that, if they are working under a barber or a cosmetologist, that gosh, they can wash hair and clean the sink and whatever.

SENATOR LARSEN: I had no input into why they were being asked to pay a fee and be licensed. My understanding would be that there are conditions of the hair that perhaps a shampoo assistant might be able to recognize. So, the Barbering Cosmetology Board requested this small fee and licensing procedure in order to educate those who do shampooing to recognize certain conditions of the hair. We did not get that deeply involved in the hearing process to understand that from them.

SENATOR BOYCE: Follow up. It sounds to me, you know, if you really want to take the stress off of the hair cutters and so forth, that it would be better to do that, and maybe the reason that the Cosmetology Board wants to do this is that they like to over-regulate and they want to charge the fees. Is that possible?

SENATOR LARSEN: If it were possible to table this bill and go back to the licensing board and get some more information, that may be something which I'd be willing to look into during the course of this next week.

SENATOR BARNES: I guess I would like to speak, Mr. President, if I could. Unfortunately, Senator Larsen wasn't there for the whole hearing. As you can see by the vote it was a 3-0 vote. She was tied up in another committee I'm sure. And we didn't...it was a 3-0 vote Senator. I am trying to speak, but I don't want to alienate my friend over here because I just want it cleared up that she did not vote on that particular bill. I don't believe, because it was 3-0. During the testimony, which there wasn't a heck of a lot of it, I saw no barbers, no shampooists, no anyone, come in to say, "Oh my God, we need this." It was a very simple hearing. Senator Roberge banged the gavel and opened it and it was closed pretty quickly after that. So I mean, it was really a nothing type hearing. So the concern of Senator Foster over there, about helping barbers out, our local small business barbers. No barbers showed up to say, "Gee guys, we need this, it's going to help me." Just to make that perfectly clear. It was a bill that I thought was a no brainer. I apologize for having this problem on the floor.

SENATOR LARSEN: I'm sorry. Just to correct the record. The hearing record shows that I was present at the hearing, but I believe, and I recall happened is, I came in moments after the bill...I obviously had left the room to perhaps testify or go to Finance, I don't remember where I went. But, when I came back in the room, at a point, moments after the bill was being excec, I asked if I could register my vote and I was informed I could. Later I got a call saying if I wanted to register my vote, there was going to have to be a whole new convening of the committee to reconsider the vote, and I said it wasn't worth it. That I would make my statement on the floor. So that is why my vote is not registered, but the hearing report shows that I was present for the hearing. And, it points out that the bill's a housekeeping bill originating out of JLCAR and it is a positive gateway for younger people **TAPE CHANGE** possibly be in three places at once.

Committee report of inexpedient to legislate is adopted.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Wiley Coyote again, Mr. President. At the risk at the end of the day, I need to understand where we are, parliamentarily, with 177. It's on the table.

SENATOR EATON (In the Chair): 177 is on the table. The motion for 177 is ought to pass with amendment. The questions were whether or not it was going to be recommitted to come out next year or re-refer to committee, which would come out this year. Opposite, I am sorry. Okay, recommit is return to committee. Re-refer will come out next year.

SENATOR BURLING: One final question if I may, Mr. President? I do remember that I heard Chairman Morse say this morning that 177 was one of the bills that he wanted to bring to Finance. And if that were the case, and I wanted to accommodate his will to get it to Finance, would we not have to act today on the bill, unless it were going to go to next year? I mean, what are our choices, I guess I am asking?

SENATOR EATON (In the Chair): The choice would be up to whatever you want to do. I would have to re-refer with our committee chairman to see whether it would go to Finance.

SENATOR BURLING: If I may, Mr. President? If I wanted to pass the bill now so it could go to Finance, to be reviewed by Finance and Chairman Morse, what would I have to do?

SENATOR EATON (In the Chair): You would have to have a motion to bring it off the table, pass it with the amendment, and send it onto Finance, if you wish to have it.

SENATOR MORSE: If the Senator did want to do that, would Finance be the one fixing the policy side of it? There is a part in here that definitely recreated something that makes it a Finance issue, 'cause they created a new dedicated fund. It's on the bottom of the bill, section II, so it obviously has to come to Finance. But there is a lot of policy in all the sections before that. It affects more than one industry, that I guess you are telling me spoke about it, but I think you probably ought to hear from the rest of the industries that are affected. If you want, I think it should be in that committee to straighten it out, and that would mean bringing it back in January. If you want to take it off and re-refer it.

SENATOR BARNES: Question of Senator Morse. Thank you, Mr. President. Senator Morse, Senator Burling, as we said earlier, worked very

hard with both sides on this issue. The committee heard both sides of the issue. We understand that you have come up with some concerns. We understand. Everybody understands on the committee. I think, in fairness to Senator Burling and the rest of the committee, it would be nice if we could take it off the table, if we could pass it and send it to Finance. You can work on the Finance part of it and you can invite Senator Burling in to come in and help you clean up the policy problems that you have with it during our committee, and then you bring it back to us so we can act on it, so we can get it done this year. I think that is in fairness to all the work that has been on it. It should be done this year and not next year.

SENATOR EATON (In the Chair): Senator Barnes, with all due respect, the policy should be probably done in committee.

SENATOR MORSE: I would like to speak to that. Senator, when the Senator explained to me what happened with this, you heard from one large organization. Why the \$5,000 size contractors didn't get involved with this is probably because they can't afford to have a lobbying group to work for them. But the fact is, they should be up here talking about things like only one-third deposits. Because I am debating a bill, but a one-third deposit, when the materials cost 75 percent of the job, doesn't work. There is a lot that needs to be fixed in this bill and I'm willing to take it to Finance, but I can tell you that when it comes to Finance, my feeling is, in order to get it out in time, which is next Thursday, I've got to recommit it to next year. So I can recommit it to Finance if that's what you want to do. I am going to re-refer it and that is going to do the same thing we are going to do today, but the wrong committee.

SENATOR BURLING: Mr. President, I was asking if we could have a thirty second recess so that the committee could make a decision about this.

Recess.

Out of recess.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry, Mr. President?

SENATOR EATON (In the Chair): Yes, sir.

SENATOR BURLING: If I wish to get to a motion to re-refer so that the committee could bring the bill back, try to work out the concerns that Senator Morse has, and come back with a bill in January, what would I do at this point?

SENATOR EATON (In the Chair): You would vote down the committee amendment. You would vote down the ought to pass, and then it would be there for a new motion to go forward.

SENATOR BURLING: Is it necessary for me to vote down the committee amendment?

SENATOR EATON (In the Chair): Yes it is because they are all even. One is not a higher motion.

SENATOR BURLING: So, Mr. President, at this point, I would respectfully withdraw my motion relative to the committee amendment.

SENATOR EATON (In the Chair): Well, we have to take it off the table first, and then you would, if this is your wish, you would ask the body here to vote down the committee amendment, and then it is ought to pass. Vote down the ought to pass and then you would make a new motion.

MOTION TO REMOVE FROM THE TABLE

Senator Burling moved to take HB 177 off the table.

Adopted.

HB 177, relative to home improvement contracts.

SENATOR BURLING: Mr. President, I would respectfully request that my committee amendment be withdrawn at this time. We have to vote it down? I can't take it back?

SENATOR EATON (In the Chair): We have to vote down the committee amendment.

The question is on the adoption of the committee amendment (1485).

Amendment failed.

The question is on the motion of ought to pass.

SENATOR BURLING: Mr. President, I move re-refer to committee.

SENATOR EATON (In the Chair): You're getting ahead of us.

The question is on the motion of ought to pass.

Motion failed.

SENATOR BURLING: I think the ACME dynamite truck blew up. I'm with you. I'm with you. Okay. Now, re-refer?

SENATOR EATON (In the Chair): I bet you have a motion for re-refer?

SENATOR BURLING: I do, Mr. President. The very thing.

SENATOR EATON (In the Chair): And thank you everybody for your patience on this for all of us.

Senator Burling moved re-refer.

Adopted.

HB 177 is re-referred to the Committee on Public and Municipal Affairs.

HB 246, establishing a committee to study the classification of employees as independent contractors. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you very much, Mr. President. I move House Bill 246 ought to pass. House Bill 246 is a proposed study committee that will study the classification of employees as independent contractors. The reason for this study is because there is an independent contracting category on certain tax forms. The state of New Hampshire has no idea how many contractors fit into this category. This can cause many problems in revenue for the state. For example, mis-categorizing these people cost Massachusetts \$150 million. This committee will help to solve this problem. The Public and Municipal Affairs Committee recommends an ought to pass motion on this bill, and I thank you, Mr. President.

Adopted.

Ordered to third reading.

Senator Boyce is in opposition to the motion of ought to pass on HB 246.

HB 269, establishing a statutory committee for the protection of human research subjects. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Larsen for the committee.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 269 ought to pass. House Bill 269 is a request of the Department of Health and Human Services to establish in statutes the committee for the protection of human research subjects. This committee has been in existence for twelve years and seeks to be recognized as a statutory committee in order to have rulemaking authority. Further, in order to be federally recognized, they need to have recognition in New Hampshire law. The committee will be within Health and Human Services and operate as an institutional review board which oversees research conducted in the department funded programs that serve people with mental illness, developmental disabilities, and substance abuse or dependence disorders. The Public and Municipal Affairs Committee recommends a vote of ought to pass.

Senator Roberge offered a floor amendment.

Sen. Roberge, Dist. 9

May 24, 2005

2005-1579s

01/04

Floor Amendment to HB 269

Amend RSA 171-A:19-a, VIII as inserted by section 1 of the bill by replacing it with the following:

VIII. The committee shall choose a chairperson and vice-chairperson from its membership. The commissioner may assign department staff to assist the committee as needed.

Amend RSA 171-A:19-b as inserted by section 1 of the bill by replacing it with the following:

171-A:19-b Rulemaking. The commissioner may adopt rules, pursuant to RSA 541-A, relative to the operation of the committee for the protection of human subjects, established in RSA 171-A:19-a, and the procedures, conditions and criteria for the conduct and approval of research.

SENATOR ROBERGE: Mr. President. I have an amendment 1579s. It takes the fee out of the bill.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 307, establishing a committee to study the feasibility of licensing residential building and remodeling contractors. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

Public and Municipal Affairs

May 18, 2005

2005-1492s

08/01

Amendment to HB 307

Amend the title of the bill by replacing it with the following:

AN ACT establishing a committee to study the feasibility of licensing residential building and remodeling contractors, and relative to bonds and letters of credit for manufactured housing installation licenses.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 8:

6 Manufactured Housing Installation; Bond or Letter of Credit. Amend RSA 205-D:9 to read as follows:

205-D:9 Bond Required.

I. The board shall not issue a license to any person unless the person has posted a surety bond **or letter of credit to be held by the state treasurer** in [the] **an** amount [of at least \$100,000, as] **to be** determined by the board[, or the equivalent in cash, marketable securities, letters of credit, or escrow accounts with the attorney general. The type of bond shall be designated by the attorney general]. No surety bond **or letter of credit** shall be accepted unless it is with a surety company authorized to do business in this state. The surety may cancel the bond **or letter of credit** at any time upon giving 30 days' written notice to the [attorney general] **board**.

II. Any person who is damaged by any violation of this chapter may bring an action against the bond or [its equivalent] **letter of credit** to recover damages suffered and any other amounts allowable by law. The attorney general, in any action brought under this chapter or any other applicable provisions of the law, may likewise proceed against the bond or [its equivalent] **letter of credit**.

7 New Paragraph; Rulemaking. Amend RSA 205-D:20 by inserting after paragraph XI the following new paragraph:

XII. The establishment of bond and letter of credit requirements under RSA 205-D:9.

2005-1492s

AMENDED ANALYSIS

This bill establishes a committee to study the feasibility of licensing residential building and remodeling contractors.

This bill also allows the manufactured housing installation board to issue licenses to applicants who provide a letter of credit to the state treasurer in lieu of a surety bond.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 307 ought to pass as amended. House Bill 307 establishes a study committee to study the feasibility of licensing residential building and remodeling contractors. The goal of this study committee will be creating a program that is not just a revenue generator for the state, but one that has teeth and protects the consumer. This committee is needed because this is a major problem in our state. At the hearing, the Attorney General's Office testified that the highest number of complaints and cases were brought against contractors. The amendment allows the Manufactured Housing Installation Board to issue licenses to applicants who provide a letter of credit to the state treasurer in lieu of a surety bond. The Public and Municipal Affairs Committee recommends ought to pass as amended.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Boyce is in opposition to the motion of ought to pass as amended on HB 307.

HB 467, relative to naming private roads. Public and Municipal Affairs Committee. Ought to pass, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 467 ought to pass. House Bill 467 permits the governing body of a town to change the name of a private road when the name change is necessary to conform to the requirements of the enhanced 911 telecommunications system. Currently the renaming of a road can only be done if the road is considered public. This has caused a problem in some towns where there are a great number of private roads. The bill provides that land-owners will be part of the renaming process and if at all possible, their name choice be used. The Public and Municipal Affairs Committee recommends a vote of ought to pass, and I thank you, Mr. President.

Adopted.

Ordered to third reading.

HB 505, relative to recording mailing addresses on property deeds. Public and Municipal Affairs Committee. Re-refer to committee, Vote 5-0. Senator Roberge for the committee.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 505 re-referred. House Bill 505 requires a deed to include the complete mailing address for the property. The committee recognized the importance of this legislation but in the hearing, concerns were raised with regard to privacy, and the committee felt this needed to be addressed before the bill could move forward. The Public and Municipal Affairs Committee recommends re-refer of this bill.

Adopted.

HB 505 is re-referred to the Committee on Public and Municipal Affairs.

HB 549, modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Kenney for the committee.

Public and Municipal Affairs

April 19, 2005

2005-1184s

04/09

Amendment to HB 549

Amend the bill by replacing all after the enacting clause with the following:

1 School Money; Miscellaneous Provisions. Amend RSA 198:20-b, III to read as follows:

III.(a) *For unanticipated funds in the amount of \$5,000 or more*, the school board shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the meeting is held.

(b) *A school board may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$5,000. For unanticipated funds in an amount less than \$5,000, the school board shall post notice*

of the funds in the agenda and shall include notice in the minutes of the school board meeting in which such funds are discussed. The acceptance of unanticipated funds under this subparagraph shall be made in public session of any regular school board meeting.

2 Powers and Duties of Towns; Miscellaneous Provisions. Amend RSA 31:95-b, III to read as follows:

III.(a) For unanticipated moneys in the amount of \$5,000 or more, the selectmen or board of commissioners shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

(b) The board of selectmen may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$5,000. For unanticipated moneys in an amount less than \$5,000, the board of selectmen shall post notice of the funds in the agenda and shall include notice in the minutes of the board of selectmen meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular board of selectmen meeting.

3 Public Libraries; Trustees' Authority to Accept and Expend Gifts. Amend RSA 202-A:4-c, III to read as follows:

III.(a) For unanticipated moneys in the amount of \$5,000 or more, the public library trustees shall hold a prior public hearing on the action to be taken. Notice of the time, place, and subject of such hearing shall be published in a newspaper of general circulation in the relevant municipality at least 7 days before the hearing is held.

(b) The public library trustees may establish the amount of unanticipated funds required for notice under this subparagraph, provided such amount is less than \$5,000. For unanticipated moneys in an amount less than \$5,000, the public library trustees shall post notice of the moneys in the agenda, if any, and shall include notice in the minutes of the public library trustees meeting in which such moneys are discussed. The acceptance of unanticipated moneys under this subparagraph shall be made in public session of any regular public library trustees meeting.

4 Effective Date. This act shall take effect 60 days after its passage.

2005-1184s

AMENDED ANALYSIS

This bill establishes provisions for the acceptance of unanticipated funds in a school district, city, town, or public library. The bill also allows a school district, city, town, or public library to elect the amount of unanticipated funds necessary to initiate the notice provisions, provided such amount is less than \$5,000.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 549 ought to pass with amendment. House Bill 459 (sic) establishes provisions for the acceptance of unanticipated funds in a school district, city, town, or public library to elect the amount of unanticipated funds necessary to imitate provisions, provided such amount is less than \$5,000. Under current law, any gift or grant to one of these town entities requires a complete posted public hearing to be held on whether or not to accept the gift or grant. With smaller gifts or grants, the cost of doing separate notices negates the benefit of the gift itself. The purpose of the amendment is to allow the town to decide, up to \$5,000 what limit they

believe a separate hearing is needed for with regard to gifts and grants. The Public and Municipal Affairs Committee recommends voting ought to pass with amendment for this bill and we ask for your support. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HCR 4, urging Congress to find that the Piscataqua River and Portsmouth Harbor lie within the state of New Hampshire. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs

May 18, 2005

2005-1493s

05/04

Amendment to HCR 4

Amend the resolution by replacing all after the sixth paragraph with the following:

Whereas, the legislative boundary commission established by 2003, 103 (HB 343) found in its October 29, 2003 final report that the Piscataqua River in Portsmouth Harbor is not patrolled and laws are not enforced in a manner that ensures the people of New Hampshire the utmost security and protection; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the general court finds that the inland Piscataqua river boundary between New Hampshire and Maine runs along the same line at the river and that the continuing dispute on this point undermines New Hampshire's ability to ensure that the state's only port of entry is adequately protected; and

That the general court asks the New Hampshire congressional delegation to introduce legislation and take such additional steps as may be necessary and appropriate to establish the location of the boundary between New Hampshire and Maine in the inner Piscataqua River; and

That the general court requests that each member of the New Hampshire congressional delegation provide the speaker of the house of representatives and the senate president with a formal response indicating his intended course of action on the boundary issue; and

That copies of this resolution, signed by the speaker of the house of representatives and the senate president, be sent by the clerk of the house of representatives to each member of the New Hampshire congressional delegation.

PARLIAMENTARY INQUIRY

SENATOR BARNES: Thank you, Mr. President. I have a parliamentary question for you. It's getting kind of late in the day and I'm a little confused. I'm sure you can straighten me right out. I have an amendment to put on this House Concurrent Resolution 4. Do you want me to do the process on the first part of it and then come out with the amendment afterwards?

SENATOR EATON (In the Chair): The amendment...we have to vote on the first amendment.

SENATOR BARNES: So, I'll read the amendment. How's that?

SENATOR EATON (In the Chair): No, we have to vote on the first amendment, the committee amendment, and then your amendment will come due.

SENATOR BARNES: Okay, so let's...you're over there right Senator Clark? Okay? I'll read the blurb. Thank you, Mr. President. I move HCR 4 ought to pass with amendment. House Concurrent Resolution 4 asks the New Hampshire congressional delegation to introduce legislation and take such additional steps as may be needed to resolve the border dispute between New Hampshire and Maine and to establish that the Piscataqua River and Portsmouth Harbor are in New Hampshire. This resolution is not simply a feel good piece of legislation. It is important to resolve this issue because the waters in and around Portsmouth are not being properly patrolled by local marine units because of the uncertainty of where one jurisdiction ends and another begins. This is an important issue that must be resolved and the Public and Municipal Affairs Committee asks you to join them in voting this resolution ought to pass with amendment, and I say thank you.

SENATOR FULLER CLARK: I'd just like to explain that there is a further amendment that will be coming. So, if we could pass this bill as amended, then there will be an additional amendment that will replace the amendment that we are going to pass.

A roll was requested.

The roll call request was withdrawn.

Amendment adopted.

Senator Barnes offered a floor amendment.

Sen. Barnes, Dist. 17

Sen. Fuller Clark, Dist. 24

May 26, 2005

2005-1667s

10/04

Floor Amendment to HCR 4

Amend the resolution by replacing all after the sixth paragraph with the following:

Whereas, the legislative boundary commission established by 2003, 103 (HB 343) found in its October 29, 2003 final report that the Piscataqua River in Portsmouth Harbor is not patrolled and laws are not enforced in a manner that ensures the people of New Hampshire the utmost security and protection; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the general court finds that the inland Piscataqua river boundary between New Hampshire and Maine runs along the same line at the river and that the continuing dispute on this point undermines New Hampshire's ability to ensure that the state's only port of entry is adequately protected; and

That the general court asks the New Hampshire congressional delegation to introduce legislation and take such additional steps as may be necessary and appropriate to establish the location of the boundary between New Hampshire and Maine in the inner Piscataqua River; and

That copies of this resolution, signed by the speaker of the house of representatives and the senate president, be sent by the clerk of the house of representatives to each member of the New Hampshire congressional delegation.

SENATOR BARNES: I hope it has been passed out. It's 1667s. Do you have it? All this does...all this amendment does, during the hearing, I came up with the brilliant idea of having our congressional delegation that we send this to, send back to us a letter acknowledging the fact that they actually got this. But after having some serious conversation with some of my colleagues, they proved that I was wrong in going that way. So all this amendment does is take that out of what the original resolution does. It takes out the request for those folks to do it, but leaves in what...I'd like to have Senator Clark talk about her section of it that she wants to keep in there, if that would be permissible.

SENATOR FULLER CLARK: Thank you very much, Mr. President. We need to keep the other language that was requested as part of the hearing, principally to clarify the language on line 9, where on line 8 and 9 where it says that the "Piscataqua River boundary between New Hampshire and Maine runs along the same line at the River." That is significant language that needs to remain in the resolution that was not in the original resolution as presented to the committee. So that is why we are asking you to support this amendment, which clarifies that language, but at the same time, removes the directive to our federal delegation to respond to us.

Floor amendment adopted.

Recess.

Out of recess.

The question is on the motion of ought to pass as amended.

SENATOR FULLER CLARK: Yes, please. I just want to make sure that everybody understands that it is important to pass HCR 4. That there have been major research that has been done around this issue since the last time it was before this legislative body. That the only way it can be resolved is to have a decision made at the federal level in Washington. That we do not have the power to either address this issue and recommend a particular position. So I would urge everyone here to support HCR 4 and vote in favor of HCR 4 on the roll call vote. Thank you.

A roll call was requested by Senator Boyce.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Morse, Hassan, Fuller Clark.

The following Senators voted No: None.

Yeas: 24 - Nays: 0

Adopted.

Ordered to third reading.

HCR 10, recognizing February 8, 2005 as Scouting in New Hampshire day. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-0. Senator Barnes for the committee.

Public and Municipal Affairs**May 18, 2005****2005-1487s****01/04****Amendment to HCR 10**

Amend the resolution by replacing the title of the resolution with the following:

A RESOLUTION recognizing February 8, 2006 as Scouting in New Hampshire Day.

Amend the resolution by replacing the second paragraph after the resolving clause with the following:

That February 8, 2006 shall be hereby proclaimed as Scouting in New Hampshire Day; and

2005-1487s**AMENDED ANALYSIS**

This house concurrent resolution recognizes February 8, 2006 as Scouting in New Hampshire Day.

SENATOR BARNES: Thank you, Mr. President. Would you do me the privilege of letting me defer this to Senator Martel who is on the Public Affairs Committee and let him bring this out? He is the holder of thirty-nine merit badges and I only had thirteen. So, if you would allow him to bring this out, I would appreciate it.

SENATOR EATON (In the Chair): How'd you get that many?

SENATOR MARTEL: Need I explain at this time of the night? Briefly. Yes, I did achieve that level. Instead of going for an Eagle Scout Award, I went for the... I was the first Boy scout in the state of New Hampshire to win, to earn the Catholic Award for Boy Scouting and the **TAPE INAUDIBLE** medal and that medal is very, very precious. So that's the reason why I was not an Eagle Scout and I had my thirty-nine merit badges, although there were nine of them were attributed to that very award. Everybody understand that? Thank you, Mr. President. I move HCR 10 ought to pass with amendment. HCR 10 as amended recognizes February 8, 2006 as Scouting in New Hampshire Day. This resolution seeks to convey to all, the excellent job that the Boy Scouts of America have done in developing men of character in this state. The Public and Municipal Affairs Committee asks for your vote of ought to pass with amendment. And, I want to thank Senator Barnes for letting me this.

SENATOR LETOURNEAU: A question for Senator Martel. Senator Martel, could you tell me what happened to the language in the bill that got removed and why it was removed?

SENATOR MARTEL: Can I defer to Senator Barnes?

SENATOR LETOURNEAU: Can someone tell me?

SENATOR MARTEL: On that one I'll defer.

SENATOR BARNES: I'd be happy to answer that for you. The original date was February 2005, and seeing that that's already gone by, we thought it would be appropriate that we would look halfway smart by having it next year so it is not something that happened three months ago.

SENATOR LETOURNEAU: Thank you.

SENATOR BARNES: You're welcome.

SENATOR KENNEY: I'm just rising, Mr. President, in support of this. A good friend of mine, Tim Easson, Representative Easson, brought this through the House. He is an Eagle Scout himself. He is from Farmington. He's very involved in that particular Boy Scouts program in Farmington and he wanted to recognize the 95 years; unfortunately, it changed to 96 years because we didn't want to look back, we wanted to look forward. But to Tim Easson, I think he did an honorable thing by recognizing the Boy Scouts. Thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 392-FN, increasing the mileage reimbursement rate for members of the legislature. Transportation and Interstate Cooperation. Ought to pass with amendment, Vote 4-2. Senator Burling for the committee.

Transportation and Interstate Cooperation

May 18, 2005

2005-1478s

03/01

Amendment to HB 392-FN

Amend the bill by replacing all after section 1 with the following:

2 Application. The rates for travel allowances for members of the general court provided for in RSA 14:15-a, I(b) as amended by section 1 of this act shall be used for calculation of the reimbursement to members beginning with travel occurring on or after January 1, 2007.

3 Effective Date. This act shall take effect January 1, 2007.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I move House Bill 392-FN ought to pass as amended. 392 increases the mileage reimbursement rate for members of the legislature. The committee heard testimony that the mileage reimbursement rates have not been adjusted since 1979; however, the costs of living have, as we have all noticed, consistently increased. The increases are reflected in this bill. If I may, Mr. President, just a couple of points I'd like to make about it. First, you will notice that Representative Burling, Senator Burling, who drives seventy miles each way to get here each day, is here presenting a bill, the sponsors of which are Representative Dickinson, who also drives quite a ways; Representative King who also drives quite a way; Senator Johnson and Senator Kenney. The request is simply a serious request that we think about the extent to which we're requiring people to subsidize the operations of the state legislature. We all know we get \$100 a year. That's a riot and a half. The question is, do we also have to pay for the privilege? Now the fiscal note to this bill is an interesting document because it tells us the extent to which members of this House and Senate are in fact currently subsidizing the operations of this legislature. Just to bring the numbers from 1979 up to present, we all know what we are talking about, right, we are using same value dollars, would require \$109,000. So the 424 of us who currently serve in this legislature, pay \$109,182 for the privilege of doing what we did in 1979. I'm honored to do it. I love doing it. I have loved doing it for fifteen years. But, there are real challenges to democracy when everybody who is working class, and almost everybody who is middleclass, cannot afford to serve in here. The least we could do is actually reimburse the people who serve the

costs of what it takes to get us here. Now every one of you has heard in the back of your mind the little alarm that says I cannot vote to increase my own reimbursement. We take care of you. Not to worry. It doesn't take effect until '07 after the people have returned the next legislature. They may get smart enough to send somebody else down here, in which case, you won't have voted to increase your own salary. Guess what? We don't actually own these seats. They belong to the people. The people have the right to a legislature in which the serving officials are reimbursed their actually allowed out-of-pocket costs for being down here. That being said, another truckload of dynamite is arriving with ACME coyote on the side of it. But please, I've been around here long enough to know what happens to this. When we don't do this, when we don't act responsibly relative to reimbursement, when we play the snickering game about this, we are telling people who earn less money that we don't care about their service. When I was Democratic Leader of the House, it was my job every two years to find 400 candidates. You can't keep doing that if they know it is going to be about \$700 out of their pocket to serve. And you know what? It isn't even fair that way, because the people in the north country have to pay more for the privilege of serving. The Reps from Berlin, the Reps from Gorham, they pay more than a Rep from Concord. That's not fair. I see you snickering at me and snickering about this, but I'm dead serious. If we don't come to grips with these reimbursement issues, we are not going to be able to find good people to do this. I think it's time that we addressed this as a serious and adult situation. It will not take effect until the next legislature is elected. We don't own these seats. The people have the right, if they're grumpy with us, to send somebody else, but at least the people ought to be reimbursing their legislators for the costs of doing this job.

SENATOR BOYCE: You mentioned 1979 was the last time it was adjusted. Wasn't it after that that they we actually even said that we had to come down here twice as often because they changed the Constitution to require annual sessions rather than biennial? And isn't it also true that the mistake was made 200 and something...or 100 and some years ago when they put numbers in the Constitution. I actually was going to vote against this, but I think I will vote in favor of it. I have spoken in favor of Constitutional Amendments to at least take the \$200 out of the Constitution. It would be better to have no salary than the joke that it is. But barring that, I think that there is some reasonableness to this bill, and I am going to join you. I wanted to ask you if that's okay?

SENATOR BURLING: Thank you, Senator. I am deeply appreciative, and it's certainly okay.

SENATOR BARNES: Thank you, Mr. President. I rise, and I am not snickering and I am not driving the dynamite truck. The records show, colleagues, that two-thirds of us will be back here in 2007. Like it or not, two-thirds of us will be re-elected, it happens every two years. Two-thirds of us come back and a third of us leave, either on our own or because the voters decide they have had enough of us. I get so sick of the folks in Washington, D.C. giving themselves raises every year that I want to throw up. And in good consciousness, I understand the costs. It cost me \$50 and I just live 34 miles away, \$50 bucks a week to come up here. I understand that and I understand the costs. But, as long as there is a possibility of me being back up here in 2007, I cannot and will not vote myself that kind of a raise. I am not going to play Washington, D.C. If I want to go to Washington, I'll run for the office down there. This is New Hampshire; this isn't Washington. I am sorry, and I do respect all the

sponsors on this bill. I am not degrading them one darn bit. But, I am just giving you my personal opinion, so it might be a 23-1 vote, but by golly, there will be at least one vote against it, and I am going to ask for a roll call on it.

SENATOR LETOURNEAU: Thank you, Mr. President. I actually was one of the committee members that voted to pass this, to bring the ought to pass motion here. With all due respect to Senator Burling, I agree with most of what he said. Policywise, he is 100 percent correct. And I voted based upon the fiscal note that I was looking at, at \$109,000 for 2006, \$204,000 in 2007. I figured out in an \$8 billion budget, it was chump change. But I found out something after the vote was taken that makes me realize that this is going to be a lot more money than what that fiscal note says, because 400 people will probably change over to the state system and come off the federal system because there will be more money involved. So I, too, will vote against this on the floor today. Thank you.

SENATOR CLEGG: Thank you, Mr. President. I rise in opposition to the committee report. Let me just say that someone mentioned that we haven't had an increase. All twenty-four Senate members are on the federal reimbursement rate and that rate went from 37 cents to 40.5 cents in December of '04. There are 281 House members on the federal rate and 117 House members on the state rate. When they did the fiscal note, they took the 117 House members and said that's what it'll cost. But in essence, if you double the mileage, people will do as they did on the federal rate when it went up. They jump from one to the other to gain the most money and I understand why. But I am as the same opinion as my colleague from Raymond. If you really want a raise and you want to increase what you get paid to come up here, by the way, this is a volunteer job, nobody made us run, then do a Constitutional Amendment and let the people back home decide whether the work we do up here is worth more than \$100 a year, because maybe they don't think so. And if we don't like that, we don't have to come back. Most of us come back, and we come up here because we are proud to serve our constituents. Yes, it costs us a little bit of money. Just the fact that you are not at work costs you money. But again, it is a volunteer position, and the right way to do it is to do it so that the people back home get to decide whether or not we get more than we are currently getting, not by sliding it through as a mileage payment. Thank you, Mr. President.

SENATOR BURLING: This is a painful question for me to ask, but I am going to ask it because I worked with him for eight years. Do you believe there is any relationship between the position you just took and the troubles that the Ethics panel has been dealing with over the last few months, because I do?

SENATOR CLEGG: No, I don't believe so.

SENATOR ESTABROOK: Thank you, Mr. President. I supported this measure in committee and I will support it again. I think it is a long overdue cost of living increase on our mileage costs. Yes, we all take the financial loss of serving here because it is important, and it is great that we are able to do that. It's one of the reasons I continue to serve. I feel fortunate that I am in a financial position to be able to take that loss. And I know that increasing the mileage is not going to make a huge difference, but if it makes some difference in encouraging and making possible more New Hampshire citizens to be able to step forward and run, then I am in favor of it. Thank you.

SENATOR FULLER CLARK: Thank you very much, Mr. President. I rise in opposition to the motion of ought to pass. I am very sorry that I disagree with my honorable colleagues here today. But I have to tell you that earlier today, we had a bill that had to do with the minimum wage, and we were unwilling to support an increase for those people who need it the most. I cannot in good conscience, even though I understand the reasons for wanting to raise this so that more people might be able to serve, I do not feel comfortable, given the vote that we took today, to be able to support this increase. Thank you.

SENATOR GOTTESMAN: Thank you, Mr. President. The words from Senator Fuller Clark were those that I was going to use. I will simply add that this Senate has been hearing from every person who needs money, from every organization and aspect of our state government and community. The last thing I think we should be responsible for is doubling our reimbursement at a time like this, and I will vote against this measure.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the motion and not because of the fact that people can't serve. Listen, this is the way that I look at. I'm doing what I love and I'm loving what I do. And I make a sacrifice to do this. I started this in 1972 when I used to have to change my schedule so that I could coach from 10 o'clock in the evening until midnight. That's when my teams practiced so that I could be here in the day time. I felt that I had a civic responsibility. I wanted to be part of the decision making process. I wanted to be here because I wanted to make a difference in the lives of people who I cared about. That's why I did it. I didn't know they paid mileage, to be honest with you. I forgot to get those legislative plates for the first year I was in office because I didn't realize you had them. So damn it. I did it because I loved it. I think that the one thing that we are forgetting about in all of this situation, and granted it the \$100 a year is absolutely nothing, it is meaningless. We are here because we want to serve people. We want to make a difference in the lives of people. We want to make their lives better. We want to make the lives of my children, my grandchildren and people in my neighborhood. When I think that I can't do that, I'll leave here. I'll either leave here because I won't get re-elected or I won't run. But I know the rules of the game, I adhere to the rules of the game, and I am privileged to be here. I don't know how many times I've said to you my colleagues, who I have the greatest of respect for. I pinch myself sometimes when I'm driving home at night, and say, "Boy, I'm a member of the New Hampshire State Senate. What an honor. What an honor to be an elected official. What a privilege it is for me to serve." I think that's the highest honor that anybody can have. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. Question of Senator D'Allesandro. Would you believe all the years you and I have served together, that's probably the best speech I've heard you give?

SENATOR D'ALLESANDRO: I believe.

SENATOR BRAGDON: Thank you, Mr. President. I just rise to remind us that most employers pay their employees at the federal rate of about 40 cents a mile, and I think it's ridiculous and will look real silly if in a time when we are looking at budget deficits of tens of millions and some would say hundreds of millions of dollars, that we want to double the rate that we are paying, to be doubled that of what our constituents are getting. So I think it's silly and I hope you vote against it.

SENATOR BURLING: I've been through this argument, Mr. President, so many times it feels like the Mississippi. I know where it begins, I know where it ends. But there is something I want to say to you all. I've been doing this fifteen years because I love it, too. I love it so much I'd like everybody in this state to have an equal chance to be able to do it, just like I'd like a minimum wage increase for the people who are struggling now. My position on this, your position on this, isn't about greater virtue; it's about making democracy and the chance of service available to all our citizens. And, with all due respect, I think that we begin to look like a club when we maintain financial traditions which put this outside the possibility **TAPE CHANGE** our citizens. I am proud to be here, but I'd be proud to have a steel worker from Portsmouth standing next to me. I'd be proud to have a teacher from Cornish standing next me. I'd be happy to have an undergraduate student from UNH standing next to me. And you know something? They can't do it the way we fix the game.

SENATOR GALLUS: Thank you very much, Mr. President. I just want to say I could care less whether we pass this or don't pass this, but I really believe, as Senator Burling has said, it would be nice to have a different range of people coming to the legislature. I know a lot of people who can't come to this Senate or can't come to the House. They can't afford to take time off of their jobs, from their jobs, and they can't pick up the tab for fuel costs coming to Concord. You have to imagine, I don't keep track of my gasoline expenditures very often, but of course gasoline has been climbing. So a couple of weeks back, I filled up in Gorham, New Hampshire. As Senator Odell knows, from my good friend Maurice Shampoo, get my little sandwich every morning, my coffee, and fill up with gasoline. On the way home, I filled that tank again and it was \$47 worth of gasoline. Those tires for my truck are \$200. I don't care for me, but I noticed that Senator King, former Senator King's name on the bill. I have a lot of Representatives. I would suggest if you want, write the Senate out of this and at least give this to, you know, the House members. I think it is time, as Senator Boyce has said, probably for a change to the Constitution where you pay some real money so some people could afford to come. I'm not looking for that. I've been blessed enough so that I can afford to do it on my own, but I would think...I would rather see that steel worker or somebody else sitting next to me in a chair. We appear to all be able to put the time in and be able to afford to come and do this job, but there are a lot of people in the state of New Hampshire, it's an imposition and a real cost. So, I'm sort of betwixt and between here a little bit on where I would vote on this bill. I was definitely going to vote against it, just saying, you know, I don't want to line my pockets. But, you know, maybe we would be helping the next guy down the road, or help some young guy who wants to come to the House and you know, has a part time job and needs a real, you know, a little bit of a kick up. I think that's basically what they are doing from the House, is asking us to put a little bit of money into this thing to allow some people to afford to come. And that's all I wanted to add, Mr. President. Thank you.

SENATOR CLEGG: Mr. President, I would just like to point out that people seem to think that we don't have a diverse population. But we have teachers. We have TV repairmen. We have a coach. We have landscapers. We have builders. We have people who are steel workers. They are in these chambers now. We haven't stopped that quality of person from coming up there. Because each and every one of us has done some-

thing else in our life. So there is a good diverse group sitting here in the Senate now, and the fact that we don't get 78 cents for our mileage didn't stop the teacher or the landscaper or the builder from coming up here. Thank you.

Amendment failed.

The question is on the motion of ought to pass.

SENATOR BOYCE: Mr. President, may I speak on the bill as amended?

SENATOR EATON (In the Chair): Please. As it stands.

SENATOR BOYCE: As it stands. Now that we have defeated the amendment.

SENATOR EATON (In the Chair): Yes.

SENATOR BOYCE: I did make a remark a little bit ago that I was going to vote for it; however, this would be voting for an increase during my term in office and I have changed my mind. If the amendment had passed, I would have voted for it. But now I believe I do have to vote against it.

The question is on the motion of ought to pass.

A roll call was requested by Senator Bragdon.

Seconded by Senator Barnes.

The following Senators voted Yes: Burling, Estabrook.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse, Hassan, Fuller Clark.

Yeas: 2 - Nays: 22

Motion failed.

Senator Clegg moved inexpedient to legislate.

Adopted.

HB 392-FN is inexpedient to legislate.

HB 393, establishing a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls. Transportation and Interstate Cooperation. Inexpedient to legislate, Vote 5-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 393 inexpedient to legislate. House Bill 393 establishes a committee to study methods for requiring employers to permit voluntary and paid on-call emergency first responders to respond to calls. The committee recognizes and commends the work achieved by the sponsors of this legislation. However, after careful consideration, the committee feels that this legislation is not needed. Please support the recommendation of inexpedient to legislate, and I thank you, Mr. President.

Committee report of inexpedient to legislate is adopted.

HB 599-FN, requiring disclosure to consumers of the presence of event data recording devices in new motor vehicles. Transportation and Interstate Cooperation. Re-refer to committee, Vote 6-0. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President, members of the committee. There are six members of the committee. We had about eight people testify, and this is all about the little black box that's in the new cars, and none of us could agree who gets the information so we ask to re-refer it. Thank you.

Adopted.

HB 599-FN is re-referred to the Committee on Transportation and Interstate Cooperation.

HB 604-FN, discontinuing the use of tokens. Transportation and Interstate Cooperation. Ought to pass, Vote 4-2. Senator Morse for the committee.

SENATOR MORSE: Thank you, Mr. President. I move House Bill 604 ought to pass. House Bill 604 bill discontinues the use of tokens on the state turnpike system. The Transportation Commissioner testified before the committee and said that the toll booths cannot be expanded and cause major traffic backups. She highlighted the three main concerns with continuing the use of tokens: safety, air quality and congestion. Commissioner Murray also said that in order for EZ Pass to be successful, there needs to be room for a big enough penetration into the market, and it will be hard for that to happen with the use of tokens still in place. The committee also heard reliable testimony that there is a lot of flexibility with the EZ Pass for discounts. We ask for your support on the ought to pass and I'd like to offer an amendment.

Senator Morse offered a floor amendment.

Sen. Morse, Dist. 22

May 26, 2005

2005-1663s

06/04

Floor Amendment to HB 604-FN

Amend the title of the bill by replacing it with the following:

AN ACT discontinuing the use of tokens and relative to certain tolls in the town of Merrimack.

Amend the bill by replacing section 1 with the following:

1 New Paragraphs; Tokens Discontinued; Discount for Merrimack Exits. Amend RSA 237:11 by inserting after paragraph V the following new paragraphs:

VI. Tokens shall not be used for the payment of tolls on the New Hampshire turnpike system.

VII. Notwithstanding paragraphs III and IV, the governor and council shall discount the toll at exits 10, 11, and 12 of the F.E. Everett turnpike in the town of Merrimack by 50 percent for users of the regional electronic toll collection system who have privately owned or leased passenger vehicles or motorcycles, registered as private passenger vehicles or motorcycles in the state of New Hampshire, and who are residents of the town of Merrimack with a mailing address that includes a zip code for the town of Merrimack.

2005-1663s

AMENDED ANALYSIS

This bill discontinues the use of tokens on the state turnpike system. This bill also reduces certain tolls on the F.E. Everett turnpike for private passenger vehicles and motorcycles registered by residents of Merrimack.

SENATOR MORSE: Thank you, Mr. President. Would you like me to speak to it? Sure. This is an amendment to put the toll booth back in Nashua. Just checking. Before I get serious, I hope we can limit debate until eight o'clock 'cause Finance would like to meet at eight o'clock. This amendment, and having been here for my seventh year and talked about tolls all of those seven years and read the report that Senator D'Allesandro recites all the time, I think, if we are going eliminate tokens, and with the flexibility that this system offers, and I've talked to the Commissioner about this, we have the flexibility in Merrimack to be able to let them stay at the 50 percent discount, because it's all computerized. When we give them a transponder in that town, and bill them at that zip code, we can give them the same 50 percent discount that they are experiencing today with passenger vehicles and motorcycles. That would be my intent, and that's what this amendment intends to do, unless I've made a mistake, which I see a lot of hands flapping. But I guess the question of the day is going to be, why not somewhere else? And the other question will be, why did you switch from where you were last year when you defeated a piece of legislation because I led the charge on it where Governor and Council, we're trying to take away their authority? I honestly believe in that year, they could have settled this problem, because this was all about implementing EZ Pass, implementing air quality thing in the state of New Hampshire and reducing a \$700,000 expense that shouldn't be in place now. We should be in EZ Pass and moving on. The other end of this is, why they are discussing reducing the amount to a 30 percent discount is because over in Rochester, we'd like to be able to start a project that the turnpike cannot fund at this point. We are going to create about \$10 million, which would create about \$70-\$80 million in bonding, which could do that project. I'm only asking at this point, to eliminate the tolls, keep the state hap...eliminate the tokens and keep the state flush with that \$700,000 and to keep the fair system in Merrimack. But I would hope Council and the Governor, would react to the other half of this plan and let's get going with it. We voted on this years ago, to put it in place, and it should be in place. With that, I'll accept any questions.

SENATOR GATSAS: Only two quick questions, Senator. One is, I have constituents that live in Hooksett. They have the same plate as the people in Merrimack. Some of them can't leave their community unless they take 3-A to get out, just like Merrimack. So why don't we include the residents of Hooksett to participate in this same project, and a follow up?

SENATOR MORSE: And this is my sincere theory behind that. When Merrimack was built, and Governor Sununu was here, and they brought over this paperwork in the last month over here. There was a deal cut by the selectmen over there, and they acknowledged it. Just like Nashua, but that one's gone away, and the other one that I lost my first debate on in the House is gone away. But those people that are living there are living under what the selectmen did there that opened up the only way they can get on the highway. I don't believe it is the same situation. We all use 93. I don't believe it's the same situation. Merrimack, I believe, we've set aside one town with three toll booths right there. I don't think we can go and reduce the 50 percent discount. I think they need to have the 50 percent discount.

SENATOR GATSAS: Follow up. A couple of hours ago we had an interesting debate and Senator Roberge spoke eloquently about staying out

of the courts' business. I think it was her speech that probably moved the vote to where it did. That was about a study committee. Why would we want to get into the Governor and Council's business?

SENATOR MORSE: Senator, that is a difficult question to answer, but I think a year later, and not implementing EZ Pass, is wrong. I led the charge in committee to kill the legislation, because I didn't think we should get in Governor and Council's business. But a year? If we go another year, it's \$700,000 more, and we've accomplished nothing. We're not going to get the Rochester thing done. They're all screaming for it to happen over there. They know they need money to make it happen. That's the purpose right now. I would have hoped, when I made that phone call to the council, that it would have been returned. I've talked with you about it. I think we should implement the whole plan at this point. If it isn't going to get done, I think we ought to do it.

SENATOR GATSAS: Follow up. Senator, I couldn't agree with you more. If we want to do the whole plan, that's fine, but let's not take a piece of it, because I don't think we should be infringing on a piece of their business. Either take the entire bull by the horns and shake him or leave it alone. Would you believe?

SENATOR MORSE: If that's a question, it would be my intent to take this bill to Finance. I wanted to get it to Finance. I believe that Merri-mack should understand that we are going to keep them at a 50 percent discount. If nothing's done in Governor and Council, it is my intent to put this out of Finance, if the Finance Committee will do that, with a plan on it. I think it needs to be done.

SENATOR BARNES: Yes, a question of Senator Morse. Thank you very much, Mr. President. Don't you think an answer to Senator Gatsas' question, Senator Morse, question being, why are we putting our nose in the Executive Council's business, wouldn't a good answer to him have been, gee four years ago this chamber passed the damn thing and we are still waiting for it to happen? I mean, first the Executive Council why are we putting our nose in? We're just trying to do something that we did four years ago in this very chamber. Wouldn't that have been a good answer to Senator Gatsas?

SENATOR MORSE: It might have been a good answer and I can tell you, Senator, that when a council member was in our committee, we told the council member we didn't want to be involved and we thought they needed to move, and they haven't.

SENATOR BARNES: Thank you very much, Senator Morse.

SENATOR LETOURNEAU: Senator Morse, can you tell us how much money we have spent on EZ Pass so far and we haven't implemented it?

SENATOR MORSE: I'm going to give you a rough number. It's probably around \$9 million in that range, \$8-\$9 million.

SENATOR LETOURNEAU: And don't we have some transponders sitting in a warehouse somewhere?

SENATOR MORSE: Right. And that becomes the next level of discussion on the warranty of those transponders. You know, we can debate this 'til the cows come in. But good management will walk us forward, will solve the warranty problem if that is where you're going, and we'll get these transponders in the people's hands. But people are not going

to buy a transponder if you still have a token hanging out here. So we need to get rid of the tokens, say we are going to transponders, however you want to implement that, and let's go.

SENATOR GOTTESMAN: Senator Morse, after whom any Nashua toll booth will be named...Thank you. If I were to vote for this amendment, would I be actually be voting for an increase in the tolls to everyone else other than Merrimack?

SENATOR MORSE: For about seven days, because I honestly believe you're going to come back with a plan next week, if it's not coming out of Governor and Council, and you're going to be voting to put a plan in place on this floor, because I believe we need to implement a plan in the state and move forward with EZ Pass. So I would guess you'd come back next week and vote for a plan and send it off to the Governor. I think it's time to do that.

SENATOR GOTTESMAN: Thank you.

SENATOR FOSTER: A little bit on the same line. My concern with this is the people who ask me about EZ Pass and when's it coming, aren't that concerned about the cost of the toll, but are concerned about convenience. I say they're upper income people. Nobody else asked me about that other than really those folks, and actually some out of staters, too, who use it for holiday purposes. But what I am concerned about is by voting for this, I did some math and, if the 50 percent discount for tokens is lost, and I realize there might be some discount, but at 50 percent, it's \$180. So if somebody might commute from Nashua to Manchester every day. So why wouldn't I be, in a sense putting into place, by getting rid of the tokens, and losing that discount, in effect, a toll increase? It's a tax almost. We're raising up the costs for the people who would be commuting except for in Merrimack, who I agree have a special problem. I am not saying they don't, but I am looking at the rest of the amendment to the bill.

SENATOR MORSE: That's actually where you're going right now. We're only dealing with Merrimack today. But this bill is going to Finance, it's not going to the Governor after this, and when it comes out of Finance, I think the whole plan should be in place, because you are going to have to deal with the rest of the state of New Hampshire. I think it's important to deal with that. At this point, I'd like to get it to Finance. So I purposely wanted to state this 'cause they're the people that are emailing every Senator in here, is Merrimack. Understandably. Heard them for seven years. It's really a tough situation that they were put in. They are benefiting from it though, I'll tell you that. But we're also not benefiting and I was kidding about the Nashua toll, but it's a \$5 million loss for the system. It's a big deal. Right now we're just maintaining. We're not going ahead.

SENATOR FOSTER: Follow up. While the people who asked me about EZ Pass and what's happening with it, and I have an answer, and it may not be a great one. I know that if I sat down at a diner in Nashua and asked people how many people want to get rid of the tokens and lose the 50 percent discount, all of them are going to tell me no. And that is what I see in this legislation, getting rid of the tokens. I am getting rid of the 50 percent discount, and I don't know what's going to happen to the bill after that. I guess you're saying that I'll have another shot at it in a couple of weeks, but I don't know what's going to occur. So how do I tell people that by not giving them tokens...

SENATOR MORSE: This is about leadership. It's about leadership in the state of New Hampshire. We voted. I am not sure if you were a Rep at the time...

SENATOR FOSTER: No, I was not.

SENATOR MORSE: But we voted to put EZ Pass in. I made that vote. It's going to cost money. Commissioner Murray, time after time, came over to this legislature and said "It's going to cost money." The fact is, we voted for it for air quality. Now we voted for it and we need to put it in place instead of spending money and not doing it. This is ridiculous. We are going to have to take the bull by the horns. We are going to have to put a plan in place if no one else wants to do it and let's go. It's going to cost money. It is a tough decision. You want to put my name down in Nashua, go ahead. I am not asking for the toll booth, trust me. I wouldn't go there.

SENATOR FOSTER: One further follow up. What I haven't heard though, is why you can't have EZ Pass and tokens. The people who want the convenience, the people who asked me about it, will pay for it...and the people who...

SENATOR MORSE: \$700,000 a year, that's why. Why do we want to run duplicate systems and spend \$700,000 to run the token system? That's a lot of money. If you read the trailer bill that came over from the House, it says we will run the system revenue neutral. What they mean by that is, the Council better do something, because we're not spending \$700,000, so it is going to be revenue neutral. I agree with them.

SENATOR FOSTER: Thank you.

SENATOR BARNES: Thank you, Mr. President. Senator Morse, isn't it true that, once you leave New Hampshire, going South, EZ Pass is all the way down throughout the east coast?

SENATOR MORSE: I believe it is all the way down to Florida.

SENATOR BARNES: Follow up. Isn't it true that those states didn't go through this gyration that we are going through, that it was a rather simple thing and that you hadn't heard during all the hearings that you've gone through over in the House and what have you, you've been involved with this for quite a while that they had no problem getting rid of their tokens and their discounts in these other states? Wasn't it a sort of an easy thing for them to do?

SENATOR MORSE: I had, you're right...and we talked about it earlier. I haven't heard anything about that. The things that came up, Senator, along the way, which you'll like, is states were talking about experimenting with MacDonald's where the EZ Pass thing took the charge and we put in legislation saying we are not ready for that. So there were a lot of good things that came out of it, because we were talking about how could we drive down the state's charge if we got businesses involved. We haven't quite got there yet, because we can't even get the thing implemented.

SENATOR BARNES: Would you believe that I think that's kind of silly that we haven't gotten the thing kicked in by now?

SENATOR MORSE: I believe that.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise to speak against the motion, not that I don't think it's a good idea that we make some changes, but I think removing the tokens at this time is not the best idea. Senator Morse made a couple of very good points. That Camp Sergeant Road development wasn't there by accident. That was there,

and the move...the removal of a toll booth there and the reinstituting them at the toll booth there was not an accident. The improvements made on that road were very expensive and were paid for by the state. The decision of this legislature to eliminate the toll booths in Nashua is one of the reasons why we have a problem. If you look at all of the studies that were done, they clearly indicated that the solvency of that toll road was contingent upon a) that toll booth being in Nashua and an increase in tolls. Wilbur Smith did these studies. Did them in the 70's. I think we are infringing upon the role of the Governor and Executive Council. And we have a new Governor in place. The Governor has pledged to make these decisions. He is looking at them and he has to make them expeditiously because of the fact that it is costing us money. It is a negative. I looked at the fund balance in that turnpike and I am worried about it, because we want improvements made in that turnpike. We've made significant improvements. Those are self amortizing bonds. And you've got to have a sinking fund that's available, one year's worth of principal and interest has to be set aside and escrowed in order to make those bonds viable in the marketplace. The decision has to be made by the Governor and Executive Council. I was on the Executive Council. I've been there. The Governor has to make a firm decision, the Council's got to support it. That's got to be done, as I said, expeditiously. EZ Pass...we've been talking about EZ Pass...how long, Chuck, have we been talking about EZ Pass? Years. Five years we have been talking about EZ Pass. It's got to come, but I think the ball is in the court of the Governor and Executive Council. If they don't do anything expeditiously, then we have an opportunity to do something. But I think they have been moving and talking about it. The Governor has made a commitment to make a decision. I think we should leave it in his hands until the time that that hasn't been done. Then the legislature should take action. But at this point in time, I don't think removing the tolls...the tokens, is the way to go. And I understand the Merrimack plight. I understand that very, very well. I've traveled back and forth from Manchester to Nashua. I did that for years. I made that trip for ten years and paid those tolls, so I understand what the situation is. But at this time, I don't think it is a wise decision to eliminate them. I think it's in the lap of the Governor and Executive Council and that is where it should stay. Thank you, Mr. President.

SENATOR GREEN: Thank you, Mr. President. It's interesting that this issue, the communities that are represented are not all included in the amendment, because that would do just the opposite of what the bill is proposing, which is to discontinue all tokens. I have no problem with Merrimack not paying...not getting...having the discount continued. But I also know that a good part of the conversation around here, and by the way, as a Senator representing Rochester on the Spaulding Turnpike, which I read about in the paper, that if we don't do what someone wants us to do, the turnpike is not going to be up for widening. That's interesting, because I, like you, went through the ten-year plan. I, like you, looked at all the numbers. I, like you, supported the bonds for 93. We all did that because we thought that was the right thing to do. I also was told at the time if 93 was bonded, that would release enough money to do the widening of the Spaulding Turnpike. That's what I was told. I wasn't told that it depended on whether we had tokens or not. That was not the issue at the time. Now, the other problem I got with this is, nobody here is sharing with any of us, the financial situation. I don't know enough about what's being claimed is in fact valid. I don't know that. I am not suggesting that the comments being made in the paper

are inaccurate, but I don't know they're accurate. I would think, if I am representing communities like Somersworth and Rochester, who are on the Spaulding Turnpike, that I would be involved in this discussion. My towns that I just got through talking about, want the tokens to continue. I want you to know the majority of people that run down that Spaulding Turnpike are going out of town to go to work in the morning and come back in the afternoon. A large percent of them go to the Navy yard. A large percent of them go to Pease. All up the Spaulding Turnpike. And I'm going to go home and tell them, "Well guys, you lost your discount." I don't think so. I don't think so. I would ask for consideration as one of the Senators who are directly affected by what we are deciding here, to give us the time to get the financial information to prove to ourselves that it's a good decision. I have to go back to my constituents and explain this. And I have no good reason why we should be denying them the discount on tokens right now. I am not against EZ Pass. But that discount hasn't been decided yet. They don't have all the facts. We are doing it in isolation. They read about the Governor. They read about the Council. They read about the controversy. You know what they are all concerned about? The discount. That's just politics. When you get done with this, you better not take away our discount. We gave it to them. We put the system in play and now we are going to take it away. What are we going to give them in return? We don't even give them a discount...they were talking 30 percent, but they don't know until they get all the facts in front of them and we have a chance, as Senators, to go to our people and say "Look, we believe this is the reasonable intelligent decision to make." I'm going to go back now and say I voted against the discount, but I don't know what you're going to have in place of it. I can't do that. So I would ask for all of you who have been part of this whole process of trying to figure out how to fund the transportation system in this state, to at least consider the rest of us who are affected by this particular action. It's not fair. It's not right for us to do this in one area of the state and not do it across the state. I also want you to know that I believe, as a Senator, that we should let the Governor and Council fulfill their responsibilities and get out of this issue. I don't mind taking a position and supporting one way or the other, but if I'm going to vote on it, I'm in a position where I've got to decide what's in the best interest of my constituents. It is not in the best interest of my constituents to be paying a toll without a discount up and down the Spaulding Turnpike. Now that may be. Twice, right. Twice. Now, in the case of Rochester, you can't get to Rochester if you take the Spaulding Turnpike. You can't do it. Now the move has always been to move the people off of 108, which you know how that works, from the Dover...from what they used to call the Weeks Circle, which is now an intersection, to Rochester. We've been trying to get the traffic off that road and onto the Spaulding Turnpike because that's where we want them to do. We're succeeding right now. But you start talking about taking their discount away, you're going to overload 108 and we're going to have a mess on our hands. So you're making a major transportation decision here and we've never been asked to do this. That's been the Governor and Council's job. Now why are we doing this? I know why Senator Morse is doing it. He thinks it's the right thing to do. He thinks it's financially the right thing to do to make things happen. I don't disrespect his position in terms of what he's trying to do. I think he has to give more consideration to how this affects the rest of us. That's all I'm asking. I'm asking to do that. I can't vote for this. If it goes to Finance, it's going to come back here and I know that the discount's going to be gone again. It's just not going to happen. He's made the case for not

needing the token. Well fine, but give us the rest of the picture. I don't think we've got the whole picture and I don't feel that I can intelligently vote on this in a way which I can explain to my constituents. I am not going to be in a position to that. I mean, we are doing some things around here that you've got to think about the people who are paying this and getting this discount. These are people who travel every day. It's not just 50 cents we're talking about or 50 percent. It's 50 cents, day after day after day. And if you read the letters to the editors in my area, the letters to the editors are very clear. "Don't take away my discount." I would urge you and ask you to please give consideration to Senators who are directly affected by this decision. Thank you.

SENATOR GATSAS: Thank you, Mr. President. I certainly understand where my colleague Senator Morse is coming from, and I think probably the proper thought, as Senator Green said, that we are all affected. There are some communities that have to go through their, Hooksett that has to go through there, and there are probably people north of that, that may travel to Manchester and have to go through that Hooksett toll booth. Being a member of this Senate for the last five years, I've watched Finance exec bills in the corner the same day we had to get them out of here. I'm sure, Senator, that once you get your budget out of the way, that if we put this on the table, that you will probably come back with a well thought out process on how we can implement the electronic toll collection system. So rather than us taking a vote to say we're going to eliminate tolls or tokens, I think probably the more prudent thing to do is put this on the table, have somebody come back, because that gives the Governor and Council a couple of weeks to certainly take a position on what they want to do with this legislation, 'cause you're right, the 30-40 emails that I am getting a day, are for people talking about discounts on the tokens, you know, at some point has to stop. And you are right, we have to take the bull by the horns and we have to move with it. So I would certainly suggest that before we move on the amendment, that Senator Morse may want to put this on the table so that he can come back and fix it in the next two weeks, having the Finance Committee meet in the corner so that we can get this done. But, I am sure they will have a plan, a thoughtful plan in place before that. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I've heard a suggestion that perhaps we should move to table this, and that may be one of the best suggestions I've heard. For myself, I, personally do not want to be voting to discontinue the use of tokens, which is what this bill does. I had a constituent come into my office in fact, saying, "Please don't eliminate tokens. I don't go through the highway tolls that often, but I can't afford to go buy an EZ Pass, and I don't want to lose the discount that I receive when I occasionally take my children south through the Hooksett toll booth." I don't want to be on record discontinuing the use of tokens. And I also believe that it is in fact, an Executive Council decision. If there's a way that we perhaps move that decision along, I think a lot of people in this state are waiting for an EZ Pass. They are waiting. I get it regularly. When is this going to happen? There are a lot of people who want the ease of the pass to happen and they are willing to pay for a transponder. They hope that they, too, will have some kind of a discount. But I believe that, if we table this, we may in fact accomplish the very same thing without asking us to support the discontinuation of the use of tokens. The other point I wanted to make is on the floor amendment regarding the Merrimack exits. Every one of us, I am sure, has seen the numerous emails and letters coming in from residents from the town of

Merrimack, and we understand the constraints that multiple exits and toll booths in their area cause on them and the financial effect of those. But that's not to say that the tolls across the state have that same affect on everyone. My question on the Merrimack discount as proposed by the floor amendment, is really one of equal taxation. I believe a toll would be considered a tax. It's a tax for the use of our highways to support our highways. And by permitting Merrimack to have a discount, and no others to be clarified as having that discount, are we in some way going up against our own constitutional protections of equal taxation under the law? Those are questions I raise. They raise enough questions that I think tabling may be the proper resolution of House Bill 604 at this time.

SENATOR MORSE: This is going to be a long day. We still have an hour we can debate. I would ask my colleagues not to table. First of all, so we don't mix funds, the Rochester is the turnpike. That's why, when I talked about an amendment this morning, the goal was to get you the funds. The other half of that plan is sitting in Governor and Council; it hasn't come forward. DOT has done a remarkable job of presenting factual data to Governor and Council, time after time after time. All available to any one of you that want to sit down and read it. All different kinds, and that's why they settled on the 30/10 situation because they wanted to get Rochester to move ahead. I wanted to make two statements today. One, it makes no sense to delay the implementation of getting rid of the tokens. They cost money. That's one statement. Two, that when they pass the rest of the EZ Pass plan, that Merrimack stays at 50 percent, because the rest of this plan is going to be 30 percent and 10 percent for commercial. Those were the two statements that I thought we were going to make today and get it into Finance. I would hope that when we get it into Finance, the Senate had made a leadership statement in this state so that we move forward in Council and we don't have to deal with it. We left this in committee for over a month so that Council could deal with this. That was my goal. Not to take it out of our committee and have to deal with it. But we are hearing delays on whether or not we are going to get rid of tokens. That's what we are hearing. That's the most expensive part. Then we are going to start to hear about warranties. It's going to be new things every time to not implement EZ Pass. We voted on that folks. It's here. It's like the OBD issue all over again. We are not living up to what we said we're going to do. I think tabling is the wrong answer. We put it in Finance. We make the statement that tokens are going to go, Merrimack is going to stay at 50 percent, and if we have to coming out of Finance, we put the plan in. I'm sure DOT will come over and speak to all 24 Senators if that's what you want and show you what that data does. But the highlight of that data is it creates \$10 million so that you can create \$70-\$80 million in bonding in the turnpike system. That's what they were trying to accomplish. That's what DOT was trying to accomplish. I guess they sort of got there with Council, but it stopped. Thank you.

SENATOR BURLING: Thank you, Mr. President. Senator Morse, you've just convinced me. I am voting either to table or I'm voting against this and here's why. We get in trouble when we start to disrespect our own Constitution. Our Constitution puts executive branch decisions in the executive branch. They make us crazy; in fact, on a regular basis they do make us crazy. But, this is their decision. Senator, you keep saying "we voted for EZ Pass." Yes, you know what? As a legislature, we em-

powered the Executive Branch to go to EZ Pass four years ago. This is their problem. With all due respect to you for your determination, your passion and your commitment to the interest of the people of New Hampshire, this is what the Governor and Executive Council ought to fix. They ought to do this. And unfortunately, it is in the nature of our Constitution, that sometimes we have to have the self-restraint to let them do their job. Thank you.

SENATOR MORSE: Senator Burling, would you believe that the House, the last biennium, sent out of the bill, to take the authority away, and we turned it down. But the House approved it in the last biennium. Would you believe that?

SENATOR BURLING: I do believe it. I remember it. Once again, this legislature came up with the self-restraint to do the right thing. Senator, I understand the cost concerns you raise. I understand your sense of frustration. But it is precisely at this kind of moment that we need to exercise even greater self-restraint. There are four Republicans and two Democrats just down the hall who got elected by the people to do this job. The people selected them to do this work. I think we ought to encourage them in every way we can, but we ought to leave them alone to do it.

SENATOR GREEN: Thank you, Mr. President. With all due respect, Senator, I know the statement you want to make, but I don't agree with that statement. The statement should be to the people that we represent. We are not going to allow this to go on and take away a discount that we provided to these people over the years, in order to make what is going to be some master plan that takes away discounts. We should present ourselves and maintain a service that we have given the people. And I think we can do that under the financial structure if we so desire. And what I don't...and it's not you...but I don't like seeing in the paper the threat basically, that if you give up these tokens, you are not going to get the widening of the Spaulding Turnpike. That is not a fact. Now, those people who are in the state who don't have to deal with tolls and tokens and EZ Pass, this apparently isn't a major issue to you. But if you were in a community which is affected by this, this would be a big deal. And those of us who are trying to make a statement, we know that right now there is nothing that we can find for information. I've got all the information that the Governor and Council's getting. That's not what I'm talking about. But there is no overall proposal that the public knows about so they can make an intelligent decision about it. So we are doing it piecemeal. You take away this now, you create a situation where you're going to have an uproar in my communities because they are not going to support this. If you really want to do that, I wish you'd give some consideration to those of us who are going to be affected by it. We've always given people around here consideration if we can, if it's an issue that affects certain districts. Our district gets affected. Merrimack gets affected, I don't have a problem. Portsmouth gets definitely affected, Dover gets affected, Hooksett, Manchester gets affected. What are we doing? Just because you don't get affected. Senator Kenney's district gets affected. They all come down route 16 for the most part, the Spaulding Turnpike. And a lot of them work south of his district. He knows that. So why are we doing this? Look, let the Governor and Council do their work and we will deal with it. Let's not start making that policy. We don't have to make that policy. Why are we doing it? We got...just because we got a bill from the House to do it? That isn't the same bill, it's been amended. I ask for my colleagues to really try to appreciate the difficult position you're putting us in, those of us who

have to deal with this. It's not fair and it's not right. The statement that I want to make to my constituents is I'm not going to sit here and support a proposal that isn't even well thought out yet **TAPE CHANGE**

SENATOR MORSE: for motorcycles and general passenger vehicles, and ten percent for commercial vehicles. That's the proposal that was on the table that DOT had given the Council, and Governor and Council are debating. That is "the proposal" so that you can take that back and say that. It's 30/10. That's the proposal on the table right now. And, Senator, nobody threatened, I guess I should form this in the form of a question...Would you believe that nobody threatened with the facts on the Rochester thing? I think it is just opposite of that. I believe what happened was a Council member believed that in order to do that, you've got to create some revenue. He wanted a gas tax. This is the way he was trying to fix it. I sit with him on the committee that's doing this. So would you believe that?

SENATOR GREEN: Senator, I believe anything that you tell me, but let me just say to you, the proposal that's on the table has been sent back for further study. It is not a final proposal. It's a proposal. Until you see all the pieces in terms of what the actual plan is, you can't get a handle on it. And I'm telling you, people understand that they're trying to do a couple of things at one time, but what they hear is the 50 percent is going to go to 30 percent, and that bothers them. I don't mind defending that position if in fact that's going to be a position that everybody understands what the alternatives are. If we think it's in the best interest of the state and the best interest of the turnpike system, we should talk about that. But we are doing it piecemeal. You're asking us to take away the discount on the tokens without knowing what the other one's going to be. That's all I'm saying. I don't disagree with what you're saying is what their proposal, but that's not been finalized. That has not been voted on by the Governor and Council, and that's their job, in my opinion.

SENATOR BARNES: Thank you, Mr. President. For the last one and fifteen minutes, we have been discussing this very important issue. I've heard four requests from people saying "Why don't we table this and come back next week when we have little clearer heads", and I'm going to make the motion that we table this. That's my motion, Mr. President.

MOTION TO TABLE

Senator Barnes moved to have HB 604-FN laid on the table.

A division vote was requested.

Yeas: 16 – Nays: 7

Adopted.

LAIID ON THE TABLE

HB 604-FN, discontinuing the use of tokens.

PARLIAMENTARY INQUIRY

SENATOR LETOURNEAU: Parliamentary inquiry, Mr. President. Where this is an FN bill and we tabled it, what happens to it according to deadlines?

SENATOR EATON (In the Chair): We could still do a possible special hoop if we get down to next week and want to look at it. We can do a special calendar.

SENATOR LETOURNEAU: Thank you.

HB 683-FN, relative to reporting of motor vehicle offenses by driver education instructors and drivers' school licensees. Transportation and Interstate Cooperation. Ought to pass with amendment, Vote 6-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

May 18, 2005

2005-1477s

03/01

Amendment to HB 683-FN

Amend RSA 263:51, III as inserted by section 3 of the bill by replacing it with the following:

III. The licensee or certificate holder has been charged with an offense under RSA 265:79 through RSA 265:82-a or RSA 630, RSA 631, or RSA 632-A and it appears to the commissioner, after a hearing, that an immediate license suspension pending the outcome of the criminal proceeding is required in the interest of public safety;

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 683-FN ought to pass as amended. House Bill 683 requires driver education instructors to obtain a certificate from the Department of Safety, requires the motor vehicle offenses by driver education instructors and drivers' school licenses, and it authorizes the suspension or revocation of driver education certificates. The committee heard testimony that this is very important to protect due process of law; however, children need to be safe and protected from driving instructors with histories of alcohol abuse, drug use, or sexual molestation convictions. The bill says that, if an infraction occurs, the instructor has five days to notify their employer. The committee amendment adds a mandatory hearing in front of the commissioner, in interest of making the process as fair as possible. Please support the Transportation and Interstate Committee's unanimous recommendation of ought to pass as amended. Thank you.

SENATOR GATSAS: Thank you, Mr. President. This bill is going to Finance?

SENATOR EATON (In the Chair): This bill is not going to Finance. It was not requested to go to Finance.

SENATOR GATSAS: Thank you, Mr. President. I thought this bill was going to go to Finance because I saw the FN on it. There are a couple of issues that I've talked to the Department of Motor Vehicles about. One is to make sure that when a parent takes their child for their driver's license, they sign a document to make sure that they understand what the rules are. I think it would be appropriate because there was an accident in Londonderry, and after that accident, I heard from two parents that said that they were unaware that for the first sixty days, that somebody at sixteen shouldn't have somebody under sixteen, or at sixteen, in the car with him driving. They were totally unaware of that. I think there is something that we should do and send a message that we put in legislation that the Department of Motor Vehicle have the parent or that notification that they sign, so that the parent gets something that says it. Nowhere in the book does it say that that child shouldn't have somebody in the car with them under sixteen for the first, I think, ninety days. So there should be something that book that tells the driver or the parent that there is some rules that the new licensee should follow, and

I think maybe this might be the appropriate bill to amend it to, and I thought it was going to Finance and I was going to prepare an amendment to do that. But that's...I think it's important that we understand and tell parents of sixteen year-olds, what the rules of the road are and what they are supposed to oblige to. I don't know if there is another place to put it.

SENATOR LETOURNEAU: Thank you. Probably...and I'm going to go out on a limb here a little bit. But the books they had were probably the old ones, and they hadn't been printed yet. That bill, that law that we passed was only last session. They probably weren't in the books, the books weren't printed yet. They will be in the new books.

SENATOR GATSAS: Senator Letourneau, don't you think that...question. Don't you think that if we print new books again, and these are old books, and we pass laws, that there shouldn't be a sticker put in the book to update those laws that we passed so that somebody knows what the new rules are that this legislature passes?

SENATOR LETOURNEAU: Quite frankly, I'm surprised that they weren't told that by the driver instructors, because they were all there. They heard his testimony.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 720-FN, relative to special number plates. Transportation and Interstate Cooperation. Ought to pass with amendment, Vote 5-0. Senator Martel for the committee.

Transportation and Interstate Cooperation

May 18, 2005

2005-1481s

03/09

Amendment to HB 720-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Official Cover Plates. Amend RSA 261:90 to read as follows:
 261:90 [~~State Seal on Number~~] **Official Cover** Plates. [~~On the special number plates issued under the provisions of RSA 261:91 to members of the senate and members of the house of representatives there shall be a reproduction of the seal of the state. If requested,]~~ **Upon payment of a fee, the director may issue and shall designate official cover plates with the reproduction of the state seal thereon to be affixed to a vehicle of** United States senators from this state, representatives to congress from this state, the governor, members of the governor's council, **the** president of the senate, **members of the senate, the** speaker of the house of representatives, **members of the house of representatives, the attorney general, the** secretary of state, and **the** state treasurer [~~may have special motor vehicle plates with the reproduction of the state seal thereon~~]. The fee for [~~such special number~~] **official cover** plates shall be \$1 in addition to any other number plate manufacturing fee otherwise required. The **official cover** plates [~~with the reproduction of the state seal~~], exclusive of the seal, shall be white with green lettering, which shall alternate with red lettering every other biennium. **Of-**

official cover plates shall have the title of the person requesting the plates, except for members of the governor's council whose plates shall have their council district numbers embossed on them, and members of the general court, whose plates shall have their house seat numbers or their senate district numbers embossed on them unless the president of the senate, for members of the senate, or the speaker of the house of representatives, for members of the house of representatives, shall designate a title for their plates. The director shall not issue more than 2 sets of official cover plates to any person. Official cover plates may be attached only to vehicles registered in the name of the person issued the plates. [~~Said special plates shall be effective for a period of 2 years.~~] Nothing herein shall be construed as affecting the issuance of regular motor vehicle plates and the payment of the registration fee therefor. *Official cover plates shall be manufactured at the state prison and the prison shall provide the plates to the department at the prison's cost.*

2 New Section; Official Cover Plate Advisory Committee. Amend RSA 261 by inserting after section 90 the following new section:

261:90-a Official Cover Plate Advisory Committee.

I. An official cover plate advisory committee is hereby established. The official cover plate advisory committee shall be composed of the following:

(a) The speaker of the house of representatives, or designee.

(b) The president of the senate, or designee.

(c) One counselor, appointed by majority vote of the governor's council.

II. The committee shall choose a member to serve as chairman.

III. The committee shall recommend to the director by December 1 of every odd-numbered year any changes to the design of official cover plates issued pursuant to RSA 261:90.

IV. The members shall serve without compensation.

3 Special Number Plates. Amend RSA 261:91 to read as follows:

261:91 Special Number Plates. Upon payment of the motor vehicle registration fee, if any, the director may issue and shall designate a special plate, to be affixed to the vehicle of the [~~governor, the members of the governor's council, president of the senate, members of the senate, speaker of the house of representatives, members of the house of representatives, the attorney general and his deputy,~~] county sheriffs, deputy sheriffs, members of the national guard, justices of the supreme and superior courts, [~~secretary of state, the state treasurer,~~] and vehicles of state police and motor vehicle divisions. The special plates shall have the state motto, "Live Free or Die," written on them and shall be issued [~~at no cost~~] *with no number plate fee being charged* to the state other than *for* those plates furnished to the [~~governor, the members of the governor's council, the president of the senate, speaker of the house of representatives,~~] state police and motor vehicle divisions. [~~The director shall not issue to a member of the general court more than 2 sets of special plates. Such~~] Special *number* plates [~~for members of the general court~~] *issued to members of the national guard and justices of the supreme and superior courts* may be attached only to vehicles registered in the name of [~~a member of the general court or a member's spouse or to any vehicle while being operated by such member~~] *the person issued the plates.*

4 Expiration of Legislative Official Cover Plates. Amend RSA 261:94 to read as follows:

261:94 Expiration of [~~Legislative Number~~] *Official Cover Plates and Special Number Plates.* Notwithstanding any other provisions of law any [~~motor vehicle number~~] *official cover plates and special number*

plates which are issued to [~~a member of the general court~~] *elected or appointed officials who have a term of office* shall expire [~~on the second Wednesday of January after~~] *at the expiration of [his term] their terms of office [as such member] or upon their retirement, resignation, disqualification, expulsion, or death, whichever comes first.*

5 Registration Fees to be Collected; Reference Changed. Amend RSA 261:141, VII(c) to read as follows:

(c) For [~~legislative~~] *official cover* plates—\$1.

6 Effective Date. This act shall take effect 60 days after its passage.

2005-1481s

AMENDED ANALYSIS

This bill modifies the provisions for motor vehicle plates issued to certain state officers.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 720 ought to pass as amended. House Bill 720 modifies and clarifies the provisions for motor vehicle plates issued to certain state officers. Essentially, this legislation issues new plates to the legislature. The committee heard testimony that the new license plates are impossible to keep clean and pose a real safety issue. The committee also heard testimony that the commissioner would replace the plates at no cost. The committee amendment creates an oversight committee and is agreeable with the House sponsors. Please join the Transportation Committee in voting ought to pass as amended, and I thank you, Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Green is in opposition to the passage of HB 720.

HB 597-FN-A, relative to the natural heritage inventory program. Ways and Means Committee. Ought to pass with amendment, Vote 3-0. Senator Odell for the committee.

Senate Ways and Means

May 19, 2005

2005-1515s

01/09

Amendment to HB 597-FN-A

Amend RSA 217-A:7-a, I as inserted by section 7 of the bill by replacing it with the following:

I. The commissioner shall charge a fee of \$25 for requests for environmental reviews and a fee not to exceed \$25 to offset the costs of providing publications and/or reports to the public. The fees charged under this paragraph shall be deposited in the fund established in paragraph II.

SENATOR ODELL: Thank you, Mr. President. I believe the end is in sight. I move House Bill 597 ought to pass with amendment. The National Heritage...Natural Heritage Inventory Program identifies and maintains a data base of vulnerable lands, flora and fauna in the state. HB 597 will authorize the NHIP to charge a fee, not to exceed \$25, for its environmental reviews and publications. The bill also changes the name of the program to the Natural Heritage Bureau. The committee

adopted an amendment to clarify that the program shall charge the fee and recommends ought to pass with amendment on House Bill 597. Thank you Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives has passed Bills with the following titles, in the passage of which it asks the concurrence of the Senate:

HJR 3, supporting the Portsmouth Naval Shipyard.

SENATOR FULLER CLARK: Yes, sir. I have a motion, Mr. President. Did you wish that motion at this time to suspend the rules?

SUSPENSION OF THE RULES

Senator Fuller Clark moved that the rules of the New Hampshire Senate be so far suspended as to dispense with the referral to the committee, a committee hearing, notice of hearing, a committee report, and notice of report in the calendar and that House Joint Resolution 3, regarding the Portsmouth Naval Shipyard, be on second reading at the present time.

SENATOR EATON (In the Chair): Can you just explain what that is for?

SENATOR FULLER CLARK: Yes. This motion requires a 2/3 vote for us to suspend the rules and pass this. This is so that we can have this resolution available for June 1st when the commissioners are going to be meeting here at the Naval Shipyard.

Adopted by the necessary 2/3 vote.

HJR 3, supporting the Portsmouth Naval Shipyard.

Senator Fuller Clark moved ought to pass.

SENATOR FULLER CLARK: I believe I already explained why we need this resolution and that we need it immediately. That is why we are asking for a suspension of the normal process for approval on the Senate side. It is a resolution that is comparable to the resolution that we passed last week on the Senate side and it's my understanding that the House did the same thing yesterday regarding our resolution.

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 39, relative to disinterment of dead bodies.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 39, relative to disinterment of dead bodies.

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 145-FN, establishing a medical/vision advisory board.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 145-FN, establishing a medical/vision advisory board.

Senator Letourneau moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 222-FN, relative to cumulative trauma under workers' compensation.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 222-FN, relative to cumulative trauma under workers' compensation.

Senator Flanders moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 56, relative to penalties for eluding pursuit by a law enforcement officer.

SB 69-L, relative to certain insurance liens.

SB 123, relative to the liability of pet shops for the sale of sick animals.

SB 143, relative to the adoption and use of impact fees for public open space.

SB 176, creating a public safety exception to a municipality's denial of an appropriation or budgetary item.

SB 180-FN-A-L, increasing certain motor vehicle registration fees and appropriating the funds for local government records management programs.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 112, relative to psychiatric evaluations in competency hearings.

HB 152-FN, establishing a committee to study the uses of biodiesel for home heating and vehicular transportation.

HB 157, establishing a committee to study procurement methods for public works projects by state and local government agencies.

HB 195, establishing a committee to study the department of insurance and awarding of the bids for health insurance for state employees.

HB 199, relative to fish and game department expenditures for marine fisheries, and relative to the membership and reporting date of the commission to study recommendations of the New Hampshire estuaries project management plan.

HB 236, relative to the time period for filing for rehearing or appeal of a zoning or planning decision.

HB 286, prohibiting the operation of pocket bikes upon ways.

HB 329, establishing the crime victim employment leave act.

HB 332, relative to harassment by telephone.

HB 353, relative to consent to haul lobster and crab gear of license holders.

HB 382, establishing a committee to develop a strategic capital plan for department of corrections' facilities.

HB 440, relative to hearing ear dogs, guide dogs, and service dogs.

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services.

HB 672-FN, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 11-FN, extending the local property tax exemption for wooden poles and conduits.

SB 17, relative to the definition of educational institution for the purpose of higher education loans.

SB 30, establishing the Collaborative Practice for Emergency Contraception Act.

SB 85, relative to expenses of operating bingo games.

SB 93-FN, transferring the electricians' board to the department of safety.

SB 150-FN, relative to application fees for certain bank incorporations.

SB 192, relative to service in a war or conflict qualifying for the veterans' tax credit.

SCR 2, relative to reauthorization of the Transportation Equity for the 21st Century Act (TEA-21).

SJR 2, a resolution urging Congress to reject the Streamlined Sales Tax Project.

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 59-FN-L, relative to municipal responsibility for septage disposal.

HB 78-FN-L, relative to state funding of regional vocational education centers.

HB 129-FN-L, establishing a high performance school incentive.

HB 132, relative to grounds for dismissal of a teacher.

HB 145, relative to the healthy kids corporation.

HB 158, relative to Auburn, Exeter, and Hampton District Courts.

HB 204-FN, relative to unauthorized video surveillance.

HB 246, establishing a committee to study the classification of employees as independent contractors.

HB 248, authorizing semi-annual payments of school building aid.

HB 269, establishing a statutory committee for the protection of human research subjects.

HB 307, establishing a committee to study the feasibility of licensing residential building and remodeling contractors.

HB 323-FN, relative to excluding social security numbers and other information from documents filed with registries of deeds.

HB 424-FN, prohibiting the receipt of cash gifts by elected officials.

HB 432, relative to the septage handling and treatment facilities grant program and the septage and sludge land application restrictions.

HB 467, relative to naming private roads.

HB 478-FN-A, making an appropriation for "Newslines for the Blind."

HB 514, establishing the New Hampshire health care quality assurance commission.

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities.

HB 549, modifying notice requirements for the acceptance of unanticipated funds by a school district, city, town, or public library.

HB 597-FN-A, relative to the natural heritage inventory program.

HB 602-FN-A, relative to the unbundling of communications services for purposes of the application of the communications services tax.

HB 618-FN-L, relative to persons acting as volunteers to a state agency.

HB 619-FN, relative to skier safety and ski area responsibility.

HB 625-FN-L, authorizing borrowing from the state revolving loan fund for the Winnepesaukee River Basin project.

HB 628-FN, relative to the authority of law enforcement officers to close an area for the purpose of abating a threat to public health or safety.

HB 640-FN, relative to parental rights and responsibilities.

HB 643-FN, establishing an integrated criminal justice information system.

HB 683-FN, relative to reporting of motor vehicle offenses by driver education instructors and drivers' school licensees.

HB 691-FN-L, relative to the medicaid program.

HB 720-FN, relative to special number plates.

HCR 2, declaring October 27 to be Boston Red Sox Day.

HCR 4, urging Congress to find that the Piscataqua River and Portsmouth Harbor lie within the state of New Hampshire.

HCR 10, recognizing February 8, 2005 as Scouting in New Hampshire day.

HJR 3, supporting the Portsmouth Naval Shipyard.

ANNOUNCEMENTS

SENATOR MARTEL (Rule #44): Thank you, Mr. President. I just want to clarify an issue that took place earlier here today. A chairman of a committee is never chastised or criticized but just to try and solve and resolve problems, and this is what we did. Mr. Hamilton from AARP did come to the State House earlier today after the heated debate. I am going to give you a word for word interpretation of what his position and the AARP's position is on 691. The official position is that of opposing the look back position in section 12 of the bill. But they do not oppose the bill. Just as clear as that. They do not oppose the bill. He asked me to convey this. Thank you, Mr. President.

SENATOR FLANDERS (Rule #44): Thank you, Mr. President. I just want the record to show that we have been going at each other here for many, many months for hearings on small group insurance, and although we never did agree, and probably won't agree, I want the record to show that I really hope that what we passed today and what's in the House, I really hope it works. I don't think it will, but I really, honestly hope it does.

SENATOR GATSAS (Rule #44): Senator Flanders, if it doesn't work, then you and I will come back and we will try and fix it again.

SENATOR FLANDERS (Rule #44): I told Senator Green to save my amendment.

SENATOR KENNEY (Rule #44): Thank you, Mr. President. I was just reading one of my local papers here. The...I believe it was the Timberland's Owners Association. New Hampshire Timberland's Owner Association had their annual meeting on May 14th, and our own Senator Carl Johnson was awarded Legislator of the Year. So I just wanted to congratulate Senator Johnson.

Senator Gottesman moved that the committee on Rules and Enrolled Bills has reviewed the Enrolled Bill amendments received by the Clerk and approved the amendments to:

HOUSE BILLS 299, 303, 394, 411, 420, 449, 465 and 469.

The Committee recommends Senate approval of these amendments.

SENATOR GATSAS: Thank you, Mr. President. What were the changes on Senate Bill 449? I'm only kidding.

SENATOR GOTTESMAN: I would just like to say that this committee has worked diligently for many hours together. Thank you.

**May 3, 2005
2005-1311-EBA
03/01**

Enrolled Bill Amendment to HB 299

The Committee on Enrolled Bills to which was referred HB 299

AN ACT establishing a committee to study state laws governing liens for labor and materials.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE**Explanation to Enrolled Bill Amendment to HB 299**

This enrolled bill amendment corrects certain references in the bill.

Enrolled Bill Amendment to HB 299

Amend section 3 of the bill by replacing lines 6-7 with the following: Builders and Remodelers Association of New Hampshire, the Association of Builders and Contractors, the Associated General Contractors of New Hampshire, and the Bankers

Adopted.

May 11, 2005
2005-1406-EBA
06/10

Enrolled Bill Amendment to HB 303-FN

The Committee on Enrolled Bills to which was referred HB 303-FN AN ACT relative to the fire standards and training commission.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 303-FN

This enrolled bill amendment makes a technical correction to the bill.

Enrolled Bill Amendment to HB 303-FN

Amend RSA 21-P:25, I as inserted by section 1 of the bill by replacing line 3 with the following:
standards for employment as [a] full-time [~~firefighter~~] ***fire service personnel***, establish minimum

Adopted.

April 27, 2005
2005-1272-EBA
08/09

Enrolled Bill Amendment to HB 394

The Committee on Enrolled Bills to which was referred HB 394 AN ACT relative to real estate tax lien procedures for tax collectors.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 394

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to HB 394

Amend RSA 80:64 as inserted by section 1 of the bill by replacing line 4 with the following:
subject to lien, certified by [him] ***the tax collector*** under oath to be true; the name of the ***current owner, if known, or***

Adopted.

May 10, 2005
2005-1380-EBA
03/09

Enrolled Bill Amendment to HB 411

The Committee on Enrolled Bills to which was referred HB 411 AN ACT relative to North Conway water precinct.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 411

This enrolled bill amendment clarifies amending language in the bill.

Enrolled Bill Amendment to HB 411

Amend section 1 of the bill by replacing line 2 with the following: 170 as amended by 1987, 417 by inserting after section 2-b the following new section:

Adopted.

**May 3, 2005
2005-1316-EBA
06/09**

Enrolled Bill Amendment to HB 420

The Committee on Enrolled Bills to which was referred HB 420
AN ACT relative to receiving and addressing complaints against licensees by the board of mental health practice.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 420

This enrolled bill amendment makes a technical correction.

Enrolled Bill Amendment to HB 420

Amend RSA 330-A:28, I-a as inserted by section 3 of the bill by replacing line 5 with the following:
investigation or disciplinary action against such licensee. If the chairperson of the board is recused

Adopted.

**May 3, 2005
2005-1327-EBA
04/01**

Enrolled Bill Amendment to HB 449-FN

The Committee on Enrolled Bills to which was referred HB 449-FN
AN ACT relative to special wild turkey seasons and permits.

Having considered the same, report the same with the following amendment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 449-FN

This enrolled bill amendment makes a grammatical correction.

Enrolled Bill Amendment to HB 449-FN

Amend section 2 of the bill by replacing line 3 with the following:
III. In addition to wild turkey licenses and permits issued under RSA 214:9, XI, the executive

Adopted.

May 12, 2005
2005-1407-EBA
06/10

Enrolled Bill Amendment to HB 465-FN

The Committee on Enrolled Bills to which was referred HB 465-FN
AN ACT authorizing the board of medicine to take non-disciplinary re-
medial action against physicians.

Having considered the same, report the same with the following amend-
ment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 465-FN

This enrolled bill amendment makes a technical correction to the bill.

Enrolled Bill Amendment to HB 465-FN

Amend RSA 329:18-a, IV-a as inserted by section 9 of the bill by replac-
ing line 2 with the following:
provisions of RSA 91-A, except that the board may disclose any final
remedial action that affects the

Adopted.

May 12, 2005
2005-1412-EBA
06/01

Enrolled Bill Amendment to HB 469

The Committee on Enrolled Bills to which was referred HB 469
AN ACT regulating disputes between homeowners and contractors rela-
tive to residential construction defects.

Having considered the same, report the same with the following amend-
ment, and the recommendation that the bill as amended ought to pass.

FOR THE COMMITTEE

Explanation to Enrolled Bill Amendment to HB 469

This enrolled bill amendment makes certain grammatical and techni-
cal corrections to the bill.

Enrolled Bill Amendment to HB 469

Amend RSA 359-G:1 as inserted by section 1 of the bill by replacing line
3 with the following:
framework for discussion about an alleged defect. As part of this process,
RSA 359-G:4, IV allows a

Amend RSA 359-G:2, II as inserted by section 1 of the bill by replacing
line 2 with the following:
which contracts with a contractor for the construction, sale, substantial
remodel or repair, or

Amend RSA 359-G:2, III as inserted by section 1 of the bill by replacing
lines 4-6 with the following:
concerning the design, construction, modification, or repair of a residence
about which a person has a complaint against a contractor. The term
may include any physical damage to the residence, any appurtenance,
or the real property on which the residence or appurtenance is affixed,
proximately

Amend RSA 359-G:2, IV as inserted by section 1 of the bill by replacing line 3 with the following:

modification or repair of a new or existing residence, or construction, alteration, addition, or repair of

Amend RSA 359-G:4, IV as inserted by section 1 of the bill by replacing lines 2-9 with the following:

within 15 days of receiving a contractor's proposal, provide the contractor and its subcontractors, agents, experts, and consultants prompt and complete access to the residence to inspect the residence, document any alleged construction defect, and, if authorized in writing by the homeowner, perform any destructive or non-destructive testing required to fully and completely evaluate the nature, extent, and cause of the claimed defect and the nature and extent of any repairs or replacements that may be necessary to remedy the alleged defect. If destructive testing is authorized in writing by the homeowner, the contractor shall give the homeowner advance notice of such tests and shall, after completion of the testing, return the residence to a condition as close as reasonably

Amend RSA 359-G:4, VI as inserted by section 1 of the bill by replacing line 1 with the following:

VI. If a homeowner accepts a contractor's offer made pursuant to subparagraph V(a), (b), or

Amend RSA 359-G:4, X as inserted by section 1 of the bill by replacing line 4 with the following:

If no response is served upon the contractor within the 30-day period, then the offer shall be deemed

Amend RSA359-G:4, XII as inserted by section 1 of the bill by replacing line 1 with the following:

XII. Service of a written notice of claim pursuant to this chapter shall automatically toll the

Amend RSA 359-G:4, XIV(e) as inserted by section 1 of the bill by replacing line 3 with the following:

of reasonable diligence prior to the homeowner's purchase of the residence, and that was not caused to

Amend RSA 359-G:6 as inserted by section 1 of the bill by replacing lines 1 and 2 with the following:

359-G:6 Release. If a homeowner accepts an offer made in compliance with this chapter and the contractor fulfills the offer in compliance with this chapter, the homeowner shall thereafter be barred

Amend section 2 of the bill by replacing it with the following:

2 Applicability. This act shall apply to all contracts entered into after the effective date.

Adopted.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 60-FN-A, relative to reimbursement of legal fees of the commissioner of the department of administrative services and making an appropriation therefor.

HB 206, relative to alcohol education and abuse prevention and treatment programs.

HB 229, establishing a committee to study the establishment of a farm viability program.

HB 311-L, enabling towns to establish revolving funds for certain purposes.

HB 408, relative to the sale of town-owned land.

HB 447-FN, relative to black bear license and tag fees.

HB 687-FN, relative to free tuition at New Hampshire public institutions of higher education for children of veterans who die while on active duty or from a service-connected disability.

SB 20-FN, relative to an increase in lottery ticket prices.

SB 40, permitting special school district meetings to be held in conjunction with the biennial election in certain school districts.

SB 57, establishing a commission to study ways to alleviate medical malpractice premiums for high risk specialties.

SB 58-FN, making certain changes in the workers' compensation law.

SB 87, relative to extension of tax liens by the department of revenue administration.

SB 117-FN, relative to utility property tax appeals.

SB 120, relative to the purchase of rail properties.

SB 141-L, authorizing the establishment of certain reserve funds by the Gorham, Randolph, and Shelburne school districts.

SB 167, relative to extension of guardianship.

SB 189, authorizing the use of interest rate swap agreements and other similar agreements by the cities of Manchester and Nashua.

SB 202, relative to property taxable as utility property.

SB 208-FN relative to certification of driver education instructors.

SB 212, relative to the railroad tax.

SB 219-FN, relative to examinations under workers' compensation.

SB 227, naming a certain bridge in the town of Enfield the Henry P. Brown, M.D. Bridge, naming the White Mountains Attractions Building the Norman B. Fadden White Mountains Attractions Building, and naming a bridge in the town of Carroll the Kenneth B. Jordan Memorial Bridge.

Senator D'Allesandro moved adoption.

Adopted.

Out of Recess.

LATE SESSION

Senator Clegg moved that the Senate adjourn from the late session.

Adopted.

Adjournment.

June 2, 2005

The Senate met at 10:00 a.m.

A quorum was present.

The Reverend David P. Jones, chaplain to the Senate, offered the prayer.

Let us pray: Every single time you cast a vote in this chamber, or open your mouth to speak, or listen to testimony in a committee hearing, or participate in your party caucus, or for that matter, run for election, you are confronted with this question. How much am I willing to compromise on the "rules" of the group to which I belong in order to achieve, or at least begin to achieve, what is best for the people? At least I hope you ask yourself that question all the time. The recent revelation that Mark Felt, the second in command at the FBI, was Deep Throat, the anonymous informer that ultimately brought down Richard Nixon's administration, has generated a whole lot of debate about that very question. What end justifies what means? Because it's without question that Mr. Felt flagrantly violated the code of ethics of confidentiality of the agency and administration for which he worked and we've been living with the consequences ever since. Some people say "thank God" he did that; other people say he's a traitor. Look very carefully at the end, the result toward which together you need to be working for us in order to make your decisions the ones that justify that end. I am not advocating that you go out and willy-nilly break the rules. In fact, I think the folks on the other side of that wall would agree with me about that. What I am advocating is be careful that you don't let any rules that are of lesser importance break you. Let us pray:

God, You alone are both the end and the means to the end. Switch on the powerful floodlight of Your desires and prod these legislators, these staffers, these lobbyists, and even these news people, that they might know that, in the end, things that matters are the things that we are called to do.

Amen

Senator Estabrook led the Pledge of Allegiance.

INTRODUCTION OF GUESTS

SENATOR EATON (In the Chair): I spoke with Senator Flanders just shortly before eight o'clock this morning, and he is in Intensive Care in the Monadnock Community Hospital feeling very chipper, very good, but they are just taking precautions because his heart was racing, and just wanted to be sure that things were alright. But he would prefer to be here right now. So we all wish him well.

SPECIAL ORDER

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses. Environment and Wildlife Committee. Ought to pass, Vote 5-0. Senator Hassan for the committee.

SENATOR HASSAN: Thank you Mr. President. I move HB 491 ought to pass. This bill serves to clarify that if someone is given permission to ride on a landowner's property, the landowner would not be accountable for injuries incurred to that person on such a property. This bill simply moves the language from RSA 215-A:34, paragraph II to RSA 215-A:5c. Just putting it in a section of the statute that deals with OHRV's. It also adds language exempting landowners for a Duty of Care to those who

are on their property for no fee, for recreational activities. The Environment and Wildlife Committee asks your support for the motion of ought to pass. Thank you.

Adopted.

Ordered to third reading.

COMMITTEE REPORTS

HB 603-FN-A, relative to the state's purchase of the Laconia district courthouse building and making an appropriation therefor. Capital Budget Committee. Ought to pass, Vote 5-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that House Bill 603 ought to pass. This legislation allows the state to purchase the Laconia District Courthouse for \$1. Currently, the state is making rental payments of \$24,200 to the city of Laconia. The purchase would eliminate those rental costs. The committee received much testimony as to how the central location of the courthouse downtown has prompted many law offices to occupy space in the downtown area. It also creates spin-off activity for people who visit local shops and restaurants. Costs to repair the building are prohibitive for the city of Laconia and this would provide a permanent solution to preserve the building. The Capital Budget Committee, has also included money to do this improvement in the Capitol Budget. The Capital Budget Committee asks the support for your motion to ought to pass. Thank you Mr. President.

Adopted.

Ordered to third reading.

SPECIAL ORDER

Senator Eaton moved that without objection, we Special Order the following Bill(s) to Thursday, June 9, 2005.

HB 170, relative to unemployment compensation.

HB 350, relative to enforcement of the labor protection statutes, permitting certain wage deductions, and increasing the civil penalty in the department of labor.

HB 490, relative to law enforcement access to financial records under the New Hampshire right to privacy act.

HB 542, making technical corrections to the uniform trust code.

There being no objection, HB 170, HB 350, HB 490 and HB 542 are Special Ordered to Thursday, June 9, 2005.

HB 435, establishing a separate high school civics graduation requirement. Education Committee. Inexpedient to legislate, Vote 4-2. Senator Bragdon for the committee.

SENATOR BRAGDON: Thank you Mr. President. I move that HB 435 be found inexpedient to legislate. HB 435 is another bill dealing with a civics graduation requirement. Since February, when we killed a similar bill, the Department of Education has proposed a civics graduation requirement in their minimum standards for public school approval. Those minimum standards were approved by JLCAR and the rules were formally adopted by the Department of Education about 2 weeks ago. There is now clearly no need for a statute dealing with this issue. The Education Committee asks for your support of the inexpedient to legislate motion. Thank you.

SENATOR FOSTER: Senator Bragdon if I may? Could the rules be changed? And if they were changed would they have to come here for permission to change those rules?

SENATOR BRAGDON: I assume the Department of Education Rules are the same as every one else's rules.

SENATOR FOSTER: So if we wanted to make sure that the requirement stayed with us, we would pass this statute to make sure that happened?

SENATOR BRAGDON: Statutes change here quite often as well, I understand, Senator.

SENATOR FOSTER: Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I rise in opposition to the committee's ITL and I am going to give Civics one last gasp here. I'm also going to do something that you will probably never see me do again. I am going to read a *Manchester Union Leader* Editorial that I agree with called "*Teaching Civics, Let's See That It Happens In New Hampshire.*" Representative Paul Smith is a graduate student at UNH. As part of his thesis on civic education in America, he got copies of the U.S Citizenship Test and gave it to juniors and seniors majoring in political science at UNH. He was surprised to find that many of them could not pass it. Smith along with myself, and Senators Boyce and Letourneau, introduced HB 435 to remedy what he rightly sees as a sorry level of civic education in the state. It would mandate that New Hampshire students be taught a course in civics before they graduate. Before the House Education Committee, Smith suggested that the bill be held so that the committee could hear what the state board of education thought about it. The committee instead, urged its passage, arguing that the requirement was important enough to be written into a statute. We would have to say that we agree. I would have to say that I agree. Civic education is woefully inadequate in New Hampshire and the country, and this bill would be a modest step toward improving it and a modest and meaningful step for the legislature to make the statement that of all the things we think are important in an adequate education, this is elementary.

SENATOR D'ALLESANDRO: Thank you Mr. President. I want to be brief because you have heard me on this a number of times. Civic engagements, civic responsibility is a basis, it's a base point in our society. By refusing to put civics into the curriculum, we are neglecting to give every citizen an education when it comes to being involved. We know, we know categorically that one of the things that we find is pervasive around this country is lack of involvement. This is our way of promoting involvement and asking people to be educated as to what their involvement should be. I think it's a very worthily situation. I've had this around for a long time in this Senate. It's not like it came yesterday. I respect the honorable Senator Bragdon and his position, but I think putting into statute makes a lot of sense. Thank you Mr. President.

SENATOR GREEN: Thank you Mr. President. As many of you know, I've been a strong proponent of civics, so I don't think that's an issue in anybody's mind, I hope. I voted in committee for the first time, for the committee recommendation, and the reason I did that is that point in time, I felt strongly that the rules had accomplished the goal that I was concerned about which is going to be a requirement in the curriculum. So on that basis, I was willing to concur with the committee, which was the majority, it actually was a tie vote. A 3-3 kind of situation. I

just wanted you to know that I am going to vote with the committee, but in no way should that reflect on my support for civics as part of the curriculum in our educational process. Thank you.

SENATOR ODELL: Thank you Mr. President. I want to join with Senator Green. I think I've been a strong advocate for civic education, civic involvement. I tried to participate as often as I can in the activities along with Senator D'Allesandro. And when we had this similar situation a couple of months ago, the rules had not come down from the state School Board. Since that time, I've spoken to the chairman of the School Board. I've spoken to a number of other people involved in this process. They've done exactly what we wanted them to do, and now if we pass...it we overturn this committee recommendation, we will basically mandating something that's already going to be in the guiding principles of our school. So I would prefer not to be adding another mandate that is actually duplicative of what the school board has just done and is now part of the rules of public education in New Hampshire. Thank you Mr. President.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Estabrook.

Seconded by Senator D'Allesandro.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Morse.

The following Senators voted No: Burling, Gottesman, Foster, Larsen, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 9

Committee report of inexpedient to legislate is adopted.

Senator Flanders is absent for the vote on HB 435.

HB 557, relative to the submission of data to the department of education. Education Committee. Ought to pass with amendment, Vote 6-0. Senator Green for the committee.

Senate Education

May 24, 2005

2005-1562s

04/09

Amendment to HB 557

Amend RSA 189:28, V as inserted by section 1 of the bill by replacing it with the following:

V. The department of education shall determine the average daily membership in attendance of every school district, city, joint maintenance agreement, charter school, public academy, and private institution that operates an elementary or secondary school, and the average daily membership in residence of each school district, municipality within a cooperative school district, and unincorporated place.

SENATOR GREEN: Thank you Mr. President. I move House Bill 557 ought to pass with amendment. This bill comes at the request of the Department of Education to help them clarify their reporting dates for certain statistics, such as Average Daily Membership Records. Currently, we have varying reporting dates that are often in conflict. This sets a

standard reporting date to the state DOE for local school districts to August the first. The bill includes charter schools in reporting requirements as well. The amendment is simply correcting a drafting error and is not a substantive change. The Education Committee supports a vote of ought to pass with amendment and hopes you will join us. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HCR 6, urging Congress to enact legislation to make English the official language of the United States. Education Committee. Ought to pass, Vote 4-2. Senator Green for the committee.

SENATOR GREEN: Thank you Mr. President. I move House Concurrent Resolution 6 ought to pass on whatever we said. What did we say? Ought to pass. Thank you. The state of New Hampshire adopted English as our official language in 1996 and this resolution will push for similar federal legislation. Adopting English as the official language will encourage more immigrants to learn English, which is beneficial to them and our country. In fact, immigrants who learn English earn a 30 percent larger salary than those who do not. Having an official language will also help to unify our country. The Education Committee supports a vote of ought to pass and hopes that you will join us. Thank you.

SENATOR ESTABROOK: Thank you Mr. President. I rise in opposition to the committee's ought to pass on HCR 6. HCR 6 sounds good on the surface, especially to people like myself who feel it's really very important that immigrants develop strong English language skills. I know my grandmother as an immigrant went to night school to do just that thing. I also believe strongly that that goal is not achieved through bi-lingual education. I oppose bi-lingual education and I don't have any problem with the bill's language in terms of stressing the importance of English as our language; however, HCR 6 asks us to embrace a specific piece of federal legislation called HR 997. I've got a copy of HR 997 and after reading the text, I cannot embrace it. While the act does make some exceptions to the requirements that all government business be conducted in English, there are undoubtedly, I believe, going to be other situation not covered in those exemptions, whereas not in the public interest to have that requirement. Additionally, while the teaching of language is exempt in the bill, bi-lingual education is not. Now as I've said, I oppose bi-lingual education, but I do not believe that we should be embracing a federal law that makes that decision in Washington. I think the decision on bi-lingual education should be made at the local level. So all and all, I think there are quite a few unknown involved in embracing this federal piece of legislation, HR 997, and so many, that I cannot do that and I ask that you also do not, and do not permit support the committee's ought to pass.

The question is on the motion of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Green.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 15 - Nays: 8

Adopted.

Ordered to third reading.

Senator Flanders is absent for the vote on HCR 6.

HB 69, relative to large groundwater withdrawals. Energy and Economic Development Committee. Ought to pass with amendment, Vote 3-1. Senator Bragdon for the committee.

Energy and Economic Development

May 25, 2005

2005-1606s

06/01

Amendment to HB 69

Amend the bill by replacing section 2 with the following:

2 New Paragraphs; Approval for Large Groundwater Withdrawals; Additional Hearing and Basis for Decision. Amend RSA 485-C:21 by inserting after paragraph V the following new paragraphs:

V-a. Upon the request of the governing body of a municipality within the anticipated zone of contribution, the department shall hold a public hearing, after receipt of the final report, and prior to a final decision. The department shall notify the municipalities within 10 days of receiving the final report. The municipalities shall have 15 days within which to request a public hearing. Notice and response to hearing requests shall be the same as that required under paragraph IV.

V-b. The department's decision on the application shall be based on a demonstrated need for the withdrawal after review of:

- (a) A description of the need.
- (b) A conservation management plan.
- (c) A conceptual hydrologic model of the withdrawal.
- (d) A water resource and use inventory.
- (e) The effects of the withdrawal on water resources and uses.
- (f) Completion of a withdrawal testing program.
- (g) Development of an impact monitoring and reporting program.
- (h) Identification of potential mitigation measures.

2005-1606s

AMENDED ANALYSIS

This bill:

I. Requires the department to provide each municipality with a copy of any correspondence sent to an applicant and to provide the applicant with copies of correspondence to an from a municipality.

II. Requires a public hearing prior to the issuance of a decision on an application for a large groundwater withdrawal.

III. Makes the record of a public hearing on a large groundwater withdrawal subject to RSA 91-A.

IV. Establishes a basis for a decision on an application for a large groundwater withdrawal.

SENATOR BRAGDON: Thank you Mr. President. I move HB 69 ought to pass as amended. The goal of this legislation is to make the approval process for "large groundwater withdrawals" more transparent, by ensuring that affected municipalities and the applicant receive copies of

all correspondence and by requiring a public hearing before a final permitting decision is made. The amendment simply provides more direction about the factors that needs to be considered before granting a permit. The Energy and Economic Development Committee asks your support for the motion of ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Senator Gottesman Rule #42 on HB 69.

HB 194, establishing a study committee to examine regulatory practices pertaining to the telecommunications industry. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

Energy and Economic Development

May 25, 2005

2005-1602s

09/01

Amendment to HB 194

Amend the title of the bill by replacing it with the following:

AN ACT establishing a study committee to examine regulatory practices pertaining to the telecommunications industry and establishing procedures for alternative regulation of small incumbent local exchange carriers.

Amend the bill by replacing all after the enacting clause with the following:

1 Purpose and Findings. The general court finds that the growth of unregulated wireless and broadband telecommunications services has provided consumers alternatives to traditional telephone utility services. The policy of this state is to promote competition and the offering of new and alternative telecommunications services while preserving universal access to affordable basic telephone services. The continuation of full utility regulation of small incumbent local exchange carrier telephone utilities is not consistent with these objectives. In light of the rapid changes in the telecommunications industry, these policy objectives will best be achieved by implementing alternative regulation plans for small incumbent local exchange carriers that encourage competition, preserve universal telephone service, and provide incentives for innovation, new technology and new services. With regard to large incumbent local exchange carriers, a study committee is hereby established to determine the appropriate form of regulation in this changing environment.

2 Committee Established. Since incumbent local exchange carriers face competition from services that are not regulated, a committee is established to study regulatory practices pertaining to the telecommunications industry.

3 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Three members of the senate, appointed by the president of the senate.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

4 Duties. The committee shall examine regulatory practices as they pertain to:

I. The importance of basic telephone services offered by land line telephone companies to households and firms not served by the rapidly evolving unregulated telecommunication industries.

II. The cost of these services to their users and to the regulated telephone companies.

III. Innovative regulatory approaches, which have been implemented in other jurisdictions, which lessen business restrictions of the companies in return for price stability.

IV. The impact of competition and the potential for alternatives other than the typical rate of return regulation that will provide incentives for infrastructure investment and the offering of new and innovative services while preserving universal access to affordable basic telephone services.

5 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

6 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2005.

7 New Section; Alternative Regulation of Small Incumbent Local Exchange Carriers. Amend RSA 374 by inserting after section 3-a the following new section:

374:3-b Alternative Regulation of Small Incumbent Local Exchange Carriers.

I. In this section, "small incumbent local exchange carrier" means an incumbent local exchange carrier serving fewer than 25,000 access lines.

II. A small incumbent local exchange carrier subject to rate of return regulation may petition the public utilities commission for approval of an alternative form of regulation providing for regulation of such carrier's retail operations comparable to the regulation applied to competitive local exchange carriers.

III. The commission shall approve the alternative regulation plan if it finds that:

(a) Competitive wireline, wireless, or broadband service is available to a majority of the retail customers in each of the exchanges served by such small incumbent local exchange carrier;

(b) The plan provides for maximum basis local service rates at levels prevailing throughout the state as of the effective date of this section plus allowances for inflation and adjustments to reflect changes in federal, state, or local government taxes, mandates, rules, regulations, or statutes;

(c) The plan promotes the offering of innovative telecommunications services in the state;

(d) The plan meets intercarrier service obligations under other applicable laws; and

(e) The plan preserves universal access to affordable basic telephone service.

IV. The alternative regulation plan may allow the small incumbent local exchange carrier to offer bundled services that include combinations of telecommunications, data, video, and other services.

V. Following approval of the alternative regulation plan, the small incumbent local exchange carrier shall no longer be subject to rate of return regulation or be required to file affiliate contracts or seek prior commission approval of financings or corporate organizational changes, including, without limitation, mergers, acquisitions, corporate restructurings, issuance or transfer of securities, or the sale, lease, or other transfer of assets or control.

8 Effective Date. This act shall take effect upon its passage.

2005-1602s

AMENDED ANALYSIS

This bill establishes a committee to study regulatory practices pertaining to the telecommunications industry.

The bill also establishes procedures for alternative regulation of small incumbent local exchange carriers by the public utilities commission.

SENATOR BOYCE: Thank you Mr. President. I move that House Bill 194 ought to pass as amended. This bill establishes a study committee to study regulatory practices pertaining to the telecommunications industry. There is a clear problem of competition facing small telephone companies in New Hampshire, and the committee feels the best thing to do is complete a careful study of the issue, and then proceed. The amendment establishes certain procedures for alternative regulation of small incumbent local exchange carriers by the PUC, which the sponsor supports. Please support the committee recommendation of ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 383, relative to vital records administration. Executive Departments and Administration Committee. Ought to pass, Vote 4-0. Senator Fuller Clark for the committee.

MOTION TO TABLE

Senator Fuller Clark moved to have HB 383 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 383, relative to vital records administration.

HB 415, excepting installation of heating equipment from regulation by the electrician's board. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 4-0. Senator Barnes for the committee.

Senate Executive Departments and Administration

May 25, 2005

2005-1616s

10/09

Amendment to HB 415

Amend the title of the bill by replacing it with the following:

AN ACT excepting installation of gas furnace or boiler equipment from regulation by the electrician's board.

Amend the bill by replacing section 1 with the following:

1 Electricians; Exception Added. Amend RSA 319-C:3, IX to read as follows:

IX. Installation of fuel oil, ***natural, propane, or other burnable gas furnace, or boiler*** equipment and controls connected thereto.

2005-1616s

AMENDED ANALYSIS

This bill adds gas furnace or boiler equipment installation to the exceptions to the regulatory authority of the electrician's board.

SENATOR BARNES: Thank you Mr. President. I move House Bill 415 ought to pass with amendment. This bill adds "gas furnace and boiler equipment installation" to the exceptions to the Regulatory Authority. The amendment corrects a misunderstanding in the House with the expansion of the exceptions. Please join the ED & A Committee with the motion of ought to pass with amendment, and we thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 257, relative to emergency medical and trauma service protocols and quality assurance program. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Estabrook for the committee.

Health and Human Services

May 25, 2005

2005-1611s

05/10

Amendment to HB 257

Amend the bill by replacing section 7 with the following:

7 Emergency Medical and Trauma Services; Rulemaking. Amend RSA 153-A:20, II to read as follows:

II. Protocols ~~[recommended]~~ ***approved and issued*** by the emergency medical services medical control board for provision of emergency medical care, which shall ~~[provide for the provision of local options under medical control. The protocols shall]~~ address living wills established under RSA 137-H, durable powers of attorney for health care established under RSA 137-J, and patient-requested, physician generated orders relative to resuscitation. ***Notwithstanding RSA 541-A:12, III, the department may incorporate by reference into such rules protocols pertaining solely to medical and pharmaceutical patient care processes issued by the emergency medical services board and approved by the commissioner.***

2005-1611s

AMENDED ANALYSIS

This bill:

I. Directs the commissioner of the department of safety to adopt rules under RSA 541-A relative to protocols for emergency medical care.

II. Removes the reference in current law to the provision of local options under medical control and repeals the definition of "local option."

III. Establishes a quality management program for emergency and trauma service providers.

This bill is a request of the department of safety.

SENATOR ESTABROOK: Thank you Mr. President. This time I'm rising to suggest we actually pass the bill. HB 257 is ought to pass with amendment from committee. The bill replaces the current regional structure for emergency medical services with a statewide structure that will streamline the administrative process and ensure that the proper medical and trauma protocols are consistent across the state. The committee amended the bill to provide the Department of Safety with authority to adopt rules by reference and those rules pertain solely to medical and pharmaceutical care processes. Such processes are scrutinized and approved by a medical board. The committee pleads that any delay can put the health and safety of others at risk, and recommends ought to pass with amendment on HB 257. Thank you Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 585, relative to grounds for termination of parental rights. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Health and Human Services

May 25, 2005

2005-1604s

05/03

Amendment to HB 585

Amend the bill by replacing all after the enacting clause with the following:

1 Grounds for Termination of Parental Rights; Based on Criminal Conviction. RSA 170-C:5, VII is repealed and reenacted to read as follows:

VII. The parent has been convicted of one or more of the following offenses:

(a) Murder, pursuant to RSA 630:1-a or 630:1-b, of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(b) Manslaughter, pursuant to RSA 630:2, of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(c) Attempt, pursuant to RSA 629:1, solicitation, pursuant to RSA 629:2, or conspiracy, pursuant to RSA 629:3, to commit any of the offenses specified in subparagraphs VII(a) and VII(b).

(d) A felony assault under RSA 631:1, 631:2, 632-A:2, or 632-A:3 which resulted in injury to the child, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

2 Child Protection Act; Petition for Termination of Parental Rights Required for Criminal Conviction. RSA 169-C:24-a, I(c) is repealed and reenacted to read as follows:

(c) Where a court of competent jurisdiction has made any one or more of the following determinations:

(1) That the parent has been convicted of murder, pursuant to RSA 630:1-a or RSA 630:1-b, of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(2) That the parent has been convicted of manslaughter, pursuant to RSA 630:2, of another child of the parent.

(3) That the parent has been convicted of attempt, pursuant to RSA 629:1, solicitation, pursuant to RSA 629:2, or conspiracy, pursuant to RSA 629:3, to commit any of the offenses specified in subparagraphs I(c)(1) or I(c)(2).

(4) That the parent has been convicted of a felony assault under RSA 631:1, 631:2, 632-A:2, or 632-A:3 that resulted in injury to the child, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant

3 Effective Date. This act shall take effect upon its passage.

2005-1604s

AMENDED ANALYSIS

This bill provides that parental rights may be terminated based on a conviction for felony assault, manslaughter, or murder of certain persons related to the defendant.

MOTION TO TABLE

Senator Martel moved to have HB 585 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 585, relative to grounds for termination of parental rights.

HB 586, relative to the periodic review of child support guidelines. Health and Human Services Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Health and Human Services

May 25, 2005

2005-1603s

05/03

Amendment to HB 586

Amend RSA 458-C:6 as inserted by section 1 of the bill by replacing it with the following:

458-C:6 Review of Guidelines. The department of health and human services shall review the guidelines provided under this chapter in order to determine whether application of such guidelines results in the determination of appropriate child support award amounts. *Upon completion of the review, the department of health and human services shall report its findings and recommendations to the president of the senate, the speaker of the house of representatives, and the governor. The review required under this section shall meet the requirements of 42 U.S.C. section 667 and may be conducted in conjunction with a legislative review of the child support guidelines.*

2005-1603s**AMENDED ANALYSIS**

This bill directs the department of health and human services to inform the legislature and the governor of its periodic review of child support guidelines and to include the findings of the commission on child support and related child custody issues, established in 2003, 277 (HB 310), in the next review of such guidelines.

SENATOR KENNEY: Thank you Mr. President. I move House Bill 586 ought to pass with amendment. House Bill 586 as amended clarifies that the Department of Health and Human Services obligation to review the child support guidelines once every four years under state and federal law can be fulfilled by participating in any legislative review of child support guidelines. The bill is a request of the Commission on Child Support and related to child custody issues established in 2003. The committee amendment removes duplicative language and the committee recommends ought to pass with amendment on HB 586. Thank you Mr. President.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 66, regulating mandatory overtime for nurses and assistants. Internal Affairs Committee. Inexpedient to legislate, Vote 4-0. Senator Boyce for the committee.

SENATOR BOYCE: Thank you Mr. President. I move that House Bill 66 be found inexpedient to legislate. This bill regulates mandatory overtime for nurses and assistants. Although there is an understanding that health care professionals are very caring people, testimony at the public hearing indicated that state and federal labor laws are already being observed. Others indicated that adopting this bill would preclude some working mothers from working longer hours on weekends when the family members are available for childcare. Therefore, the Internal Affairs Committee asks you to support the motion of inexpedient to legislate. Thank you.

SENATOR HASSAN: Thank you Mr. President. I rise in opposition of the inexpedient to legislate motion, and if we are successful in overturning that, I would expect to bring forward a motion to re-refer. While there were some concerns brought out about House Bill 66 in its original form, we have gotten a lot of feedback from a lot of different employers, and I do believe, as I think many of my colleagues do, that if we could re-refer this, and work on it at a quieter time of session, we might be able to come up with a bill that would acknowledge the concerns of those who do want to work longer than 12 hours, which the bill does permit them to do, but also acknowledges the concerns about the rise in medical errors when staff is exhausted. Thank you.

Motion failed.

Senator Hassan moved to re-refer.

Adopted.

HB 66 is re-referred to the Committee on Internal Affairs.

HB 354, relative to the review, approval, and adoption of agency rules. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Bragdon for the committee.

Internal Affairs

May 25, 2005

2005-1637s

10/01

Amendment to HB 354

Amend the bill by replacing all after section 3 with the following:

4 Study Committee on Improving Process of Rulemaking Extended. Amend 2004, 180:6 to read as follows:

180:6 Report. The committee shall report its findings, any recommendations for proposed legislation, and any specific recommendations for implementing procedures designed to improve rulemaking that do not require statutory changes. Such report shall be submitted to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before [~~November 1, 2004~~] **December 1, 2005**.

5 Effective Date. This act shall take effect upon its passage.

2005-1637s

AMENDED ANALYSIS

This bill allows house and senate policy committees to vote for a joint resolution on final agency rules, makes various changes to the adoption procedure for rules, and extends the study committee on improving the rulemaking process.

SENATOR BRAGDON: Thank you Mr. President. I move HB 354 ought to pass as amended. HB 354 originally was intended to provide better oversight by legislative policy committees over agency rules, however, it was felt that more work was needed on the proposal. The amendment strips out all the original bill except the part extending the life of the applicable study committee. We feel that with a little more work by the committee, a new proposal can be presented next year. The Internal Affairs Committee asks for your support of ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 366, relative to maintenance of voter checklists. Internal Affairs Committee. Ought to pass with amendment, Vote 4-0. Senator Boyce for the committee.

Internal Affairs

May 25, 2005

2005-1633s

03/10

Amendment to HB 366

Amend the bill by deleting sections 4-5 and renumbering the original sections 6-9 to read as 4-7, respectively.

Amend the bill by replacing section 6 with the following:

6 Sending Absentee Ballots. Amend RSA 657:15 to read as follows:

657:15 Sending Absentee Ballots. When the verification required by RSA 657:12 or 657:13 has been made, the clerk shall retain the application and, without delay, personally deliver or mail to the applicant the appropriate ballot and materials as described in RSA 657:7 through 657:9 or designate an assistant to deliver such materials to the applicant. The clerk may not designate as an assistant any person who is a candidate for nomination or office or who is working for such a candidate. Any ballots sent pursuant to the provisions of this section shall be mailed or delivered only by officials from the city or town clerk's office and delivered only to the applicant. If the address to which the absent voter's ballot is sent is outside the United States or Canada, such papers shall be sent by air mail. Said clerks shall keep lists of the names and addresses, arranged by voting places, of all applicants to whom official absent voting ballots have been sent, and shall identify those official absent voting ballots which have been returned to the clerk. Candidates whose names appear on the ballot and persons bearing notarized requests or copies of notarized requests from candidates whose names appear on the ballot may obtain copies of such lists; the lists shall not be available for public inspection at any time without a court order. *The clerk may charge a fee for copies of such lists of up to \$3 plus \$1 for every 50 names or portion thereof, plus any shipping costs.*

2005-1633s

AMENDED ANALYSIS

This bill:

I. Establishes requirements for the secretary of state to cause the removal of certain names from voter checklists.

II. Changes the 10-year checklist verification to a 4-year checklist verification.

III. Authorizes the secretary of state to assign voter identification numbers.

IV. Establishes fees for absentee voter lists.

MOTION TO TABLE

Senator Boyce moved to have HB 366 laid on the table.

Adopted.

LAID ON THE TABLE

HB 366, relative to maintenance of voter checklists.

SPECIAL ORDER

Senator Eaton moved that without objection, we Special Order the following Bill(s) to Thursday, June 9, 2005.

HB 404, permitting employees to request a wage deduction for contributions to a political action committee.

There being no objection, HB 404 is Special Ordered to Thursday, June 9, 2005.

HCR 8, urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participa-

tion are in the best interests of the citizens of the state of New Hampshire and the United States. Internal Affairs Committee. Inexpedient to legislate, Vote 3-1. Senator Bragdon for the committee.

In recess.

Out of recess.

MOTION TO TABLE

Senator Bragdon moved to have HCR 8 laid on the table.

Adopted.

LAIID ON THE TABLE

HCR 8, urging the Congress of the United States to place a moratorium on new free trade agreements, to investigate and review current free trade agreements and policies of the United States, to investigate and review participation of the United States with international trade organizations and to ensure that such agreements, policies, and participation are in the best interests of the citizens of the state of New Hampshire and the United States.

HB 61, extending the family law task force. Judiciary Committee. Inexpedient to legislate, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move HB 61 as inexpedient to legislate. This bill sought to extend the Family Law Task Force. This Task Force has completed their work, issued their final report and their recommendations are now making their way through the legislative process. In fact, we passed a bill coming from their Task Force last week. There is no need to extend their work, and therefore, the committee recommends inexpedient to legislate. Thank you.

Committee report of inexpedient to legislate is adopted.

HB 68, relative to the enforcement of disorderly conduct by reason of noise. Judiciary Committee. Re-refer to committee, Vote 4-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that House Bill 68 be re-referred to committee. The bill sought to allow a law enforcement officer to make enforcement actions unilaterally relative to loud noises. For example, music coming from a private resident or a motor vehicle, whether or not a complaint by a citizen has been made. The committee feels that this bill has merit, but also has problems to be addressed and wanted to examine whether objective standards could be put into the legislation to avoid problems raised by the recent New Hampshire Supreme Court decisions dealing with circumstances where the police act as the complainant and the enforcement officer; therefore, we ask support for re-refer and we thank you for that vote if you so desire. Thank you.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the motion. As all of you know, I sponsored legislation like this and we defeated it in the Senate. And it basically said the same things when we defeated that piece of legislation. We must recognize that there is a noise problem, particularly in the cities. I represent Manchester. The Police Chief in Manchester is very much in favor of an ordinance of this type. The Police Chief in Goffstown, both have come to me about this situation. You get a compact area such as our city. You get vehicles going up and down the street, the noise is beyond what the decibel range that you can accept. It's a problem for the individuals living in the housing. It's

a very significant problem. Now we once had a problem with cruising on Elm Street. We dealt with that. We've got to deal with this problem. It's invasive, it causes grave concern of the citizenry, and the police officers are hamstrung at this point in time. There's really not much they can do about it. We need a piece of legislation. We've gone through this process twice. We said the Senate Bill wasn't acceptable. We didn't make it acceptable. We ITL'd it. We have a bill from the House that we should pass. We should turn this around, pass it, and put it into law. We need it. The people need it. We're responding to a situation that exists in our communities. It is a very, very serious problem. Thank you, Mr. President.

SENATOR GATSAS: Thank you, Mr. President. I'd like to substitute motion of ought to pass. I believe that's a higher position.

SENATOR EATON (In the Chair): No, it is not. Ought to pass is the same motion as re-refer in status.

SENATOR GATSAS: Well then I will speak to the re-refer motion. I agree with Senator D'Allesandro. We heard, as it was reported out in Transportation, that the noise bill that the Senate has proposed wasn't the right one, and the one coming from the House was the right one. We have a noise problem. There's no question that people that don't represent communities that have downtowns, and have merely a general store or a small common, don't see the same noises that we see in the big communities. I don't think for one second that anybody's personal livelihood or personal wellbeing should be interfered with, with somebody going by and their radio so loud that the street's vibrating. The city of Manchester has taken a lot of pride and so has Nashua, about building up those outside cafes. And I defy anyone to sit there and try and enjoy a spaghetti dinner, which most of us already get their spaghetti sauce on their ties, me being one, but when those boom boxes go by, the whole table shakes, the meatball falls, and it's not very much fun. When people are woken up at two o'clock in the morning, I don't think it's the right thing to do. Now, if we want to think that a police officer's going to arrest somebody 'cause there's a baby crying, then we don't have much faith in our police officers. There is questions about whether this is constitutional. I say, let's pass the legislation, give the police officers an opportunity to enforce the law. We find ways to correct problems when they come back to us. This is something that we should pass. If there's a problem, we'll correct it. But I don't think we should leave cities exposed to the few without any police officer having the ability, other than carrying around a decibel meter. We did it with motorcycles, and said, carry a decibel meter around with them. And you need two police officers to test a decibel meter on a motorcycle. One to hold the meter and one to rev the bike. Now I don't know about the rest of you, but we have problems with tax rates in the city of Manchester. To have two police officers riding around in a cruiser to check decibel meters on motorcycles, I don't think is something that we would all suggest to do. So again, I'm going to ask you to overturn the re-refer motion and pass this bill. Thank you.

SENATOR MARTEL: Thank you, Mr. President. I stand of course, in agreement with the two previous speakers from Manchester. I, too, represent Manchester and the southern town of Litchfield. The noise has now migrated to Litchfield. These people...it's not simply a matter of damage being done by the noise factor that you hear, which is terrible in the city, but it's also an issue of safety. I dare anybody to stand or park...and you probably all had this chance to sit down at a red light in your car, having somebody next to you with a boom box going, your car's

vibrating, and you think you hear a siren coming, but you're not sure. The little red light on the top doesn't turn on, because it could be coming from behind you, or it could be coming from the right of you, left of you, straight ahead of you, you don't know, so you don't dare move. Then you start getting the oppressive noise from cars behind you that you're not moving on a green light, because you're not sure, and this boom box is still cranking. This is going on day and night. How can kids be learning in schools and they are being bombarded by noise in the inner city? People going by with their boom boxes. You know they go to the park and play basketball and they do the same thing. At least it is off the road. The issue here is that it is a matter of safety in this case. I hate to have somebody killed because we don't want to do anything to lower the decibel levels of boom boxes in automobiles and being held on the street and in hand. So I urge you all to please vote to overturn this committee decision of re-refer, but to also ought to pass on this bill. Thank you very much.

SENATOR BURLING: Thank you, Mr. President. I want to apologize first to the members of the committee who have clearly tried to do the right thing and keep this on a front burner, but I'm going to join my colleagues in voting against the motion on the floor and for an ought to pass. When I was campaigning up and down Route 4 in my district, I was approached time and time again by voters of both parties who said, "If you win, you need to do something about noise, which is affecting our lives." I made a promise. This is my last chance to keep it, because we have had a couple of bills come before us and they have been shunted off in different directions. So, Mr. President, I intend to vote no on the motion before us, and then I hope I get a chance to vote yes on the ought to pass. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I, too, rise with respect to the committee, but in opposition to the re-refer, and joining with my colleagues...for my rationale, I just want people to understand that noise is not just a problem in urban areas. On the seacoast, which I represent, especially during vacation and tourism season, noise is a considerable issue. As is true with Senator Burling, I got many calls and requests, not only during my campaign, but since then, for legislators to do something about the noise problem, and I think this is a very good first step. Thank you.

SENATOR LETOURNEAU: Thank you, Mr. President. I rise in support of the committee motion of re-refer, and I understand my colleagues' situation with noise in the cities, and I am very sympathetic to it, so is the committee. The bill as we have before us, is very poor language and we wanted to work on it. The Judiciary Committee was inundated with bills this year, and we weren't able to give it due course and come up with language that could possibly work for this and still be correct. I've got some ideas on this. I've been researching noise. I've gone to a noise summit and I've been looking at it. We just worked on some motorcycle noise legislation that we will be dealing with next week. Now having said all of that, I would respectfully ask that my colleagues allow us to work on this. It's not the language that work for all of us. This bill is very vague and it says "unreasonable noises" and don't know what "unreasonable" is. And it says "a law enforcement officer shall be considered a person of average sensibilities for the purpose of determining." That's very broad language. We need to tighten that up because it can be construed in a lot of different ways. I respect my colleagues' opinion from Manchester, and I agree with you. We've got to do something, but we need

to tighten it up. And if you just give us the chance to do that, I'm sure we'd come up with good language. As a matter of fact, if...Manchester representatives would speak to me **TAPE CHANGE** after this, today's hearings, I've got some language that you can adopt as a city ordinance that has been working in other places that had this exact same problem. Thank you.

SENATOR GATSAS: Thank you, Mr. President. Senator Letourneau...

SENATOR LETOURNEAU: You'll have to speak up, my hearing aid's not working too well today. No pun intended.

SENATOR GATSAS: That's alright, not a problem. Not a problem. Can I ask you, if I remember correctly, we had a bill in the Senate that you brought to the floor from Transportation?

SENATOR LETOURNEAU: That's correct. I believe it's re-referred.

SENATOR GATSAS: No. I don't believe it's re-referred. Is it? Can somebody give me that answer? Does anybody know that?

SENATOR LETOURNEAU: We can find that out.

SENATOR GATSAS: Because I believe that what we were told is that there was a better bill coming from the House.

SENATOR LETOURNEAU: These bills are almost identical in language, both of them.

SENATOR GATSAS: So your suggestion is that we re-refer it, amend this bill, so this whole summer the communities are going to have to deal with the noise issue. And if the next year, in June, when we go to a Committee of Conference, if the House doesn't accept this, and they don't go with the Senate position, that means it will be another summer of noise and possibly a third. Without any noise ordinance or fixing anything in any of the cities.

SENATOR LETOURNEAU: Senator Gatsas, we deal with noise every day of the week. And in the city I know you have sirens from the fire department, sirens from the police department, the airport is there. I mean, I have been in people's houses when planes take off and land. You have to stop speaking because it is so loud. I mean there is a lot of noise that you deal with and I understand you issues with it. I have been down on Elm Street. I know what's going on down there, and I am sympathetic to it. This language is just too broad and poor to put into law.

SENATOR GATSAS: Would you believe that the police siren and the fire siren is about public safety and that the airport is the engine for the state of New Hampshire, so I think we all understand that and we can appreciate those noises?

SENATOR LETOURNEAU: I understand that. There is no put down on fire or police. It's just that we deal with noise. That's the issue that we are trying to deal with.

SENATOR GATSAS: Thank you.

SENATOR FULLER CLARK: Thank you, Mr. President. I would like to speak against the motion of re-refer and stand here in favor of ought to pass. I want to point out that this bill was requested by the police association from my communities, and particularly in Portsmouth, we do have a noise ordinance. But the difficulty is in giving those people the enforcement capabilities, which is what this legislation would do, to be

able to act on that noise ordinance, or if a community does not have a noise ordinance. It is clear to me that there is nothing in this bill as it stands now that is going to impact on the issue of noise that is caused for the issues of public safety or other issues. This has to do with noise that is caused in public and private places that infringes upon the rights of other individuals in the surrounding area. I think this is good legislation. I think that recognizing that we are seeing our communities changing all the time, that it is important to pass this legislation and it is important to pass it now.

SENATOR FOSTER: Thank you, Mr. President. The committee heard a lot of testimony on this bill, and frankly, there are parts of it which simply just don't work as it's written today. However, I am hearing in this body great concern, particularly I think, as it relates with automobiles that go by. And that was really the problem that I think can't be addressed any other way. An automobile goes by with a boom box, even if a citizen complains, it's gone by the time the police officers arrive. That was the critical issue that we heard in the committee. I would love to be able to have some time to really look at this and bring back something that makes some sense. And I'll note, for those of who want to pass it today, it has an effective date of January 1, 2006. It's not going to help this summer, so if we want to help our communities this summer, we...our committee needs a little bit of time, maybe a week, to work on this, if that's the body's desire. Thank you, Mr. President.

MOTION TO TABLE

Senator Gottesman moved to have HB 68 laid on the table.

Adopted.

LAID ON THE TABLE

HB 68, relative to the enforcement of disorderly conduct by reason of noise.

HB 252, requiring bail hearings for persons arrested for probation violations. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Gottesman for the committee.

Senate Judiciary

May 25, 2005

2005-1591s

09/01

Amendment to HB 252

Amend the introductory paragraph of RSA 597:2, I-a as inserted by section 1 of the bill by replacing it with the following:

I-a. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing, the person be:

Amend RSA 597:5-a as inserted by section 2 of the bill by replacing it with the following:

597:5-a When Requirable; Bail and Recognizances for Person Detained for Probation Violation. Upon motion duly made, a court shall schedule a bail hearing. Every court may, when a person is accused of an offense or a probation violation in which said court is authorized to receive bail, release said person on personal recognizance or require him or her to recognize, with sureties, to appear at a future time before the court or any other competent tribunal.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 252 ought to pass with amendment. This bill deals with bail hearings for persons arrested for probation violations. The bill as originally drafted, mandated bail hearings in all cases of probation violations. Some counties do that while others do not permit them at all. While the committee felt mandating the hearings in all cases was not warranted, it did feel the right to a hearing ought to be available in all cases. The committee felt that regardless of where one is picked up for a probation violation, their rights should be the same. With the exception of more serious crimes such as homicide, felonies, or stalking, anyone would be entitled to ask for a hearing. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 294, relative to annulment of arrest records. Judiciary Committee. Inexpedient to legislate, Vote 3-1. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I move that House Bill 294 be found inexpedient to legislate. The bill deals with the annulment of arrest records upon acquittal. Testimony received at the public hearing indicated that, while the state could control their records, the FBI will not annul an arrest record without a petition being filed. While we all agree if someone is found innocent, the record should be annulled, what if they were able to "get off", however, on a technicality? Given the concerns involved in this bill, the committee voted that the bill be found inexpedient and asks your support. Thank you.

MOTION TO TABLE

Senator Clegg moved to have HB 294 laid on the table.

Adopted.

LAID ON THE TABLE

HB 294, relative to annulment of arrest records.

HB 372, relative to notification of interested parties in medical parole cases. Judiciary Committee. Re-refer to committee, Vote 4-0. Senator Foster for the committee.

SENATOR FOSTER: Thank you, Mr. President. I move HB 372 be re-referred to committee. When the Judiciary Committee held the public hearing on this bill dealing with notification of cases of medical parole, nobody appeared. The prime sponsor, I believe Representative Elliot, had resigned from the House and no one else came forward. In reviewing the bill, however, the committee felt there is likely merit to the notification provided for in the legislation. Therefore, the committee felt it was wise to hold...to have the bill re-referred, hold a second public hearing in January, and request that certain people attend to make sure the legislation is what it appears to be to us. Therefore, the Judiciary Committee recommends this bill be re-referred to committee and asks for your support. Thank you.

Adopted.

HB 372 is re-referred to the Committee on Judiciary.

HB 429, relative to representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals. Judiciary Committee. Ought to pass, Vote 4-0. Senator Green for the committee.

SENATOR GREEN: Thank you, Mr. President. I stand reluctantly to make a recommendation. Oh, boy. I move House Bill 429 ought to pass. This bill deals with non-attorney representation before the Board of Tax and Land Appeals and makes a technical clarification relative to their proceedings. This bill does not substantially change the BTLA processes but adds statutory clarification to what is their established standard practice. The Judiciary Committee recommends that this legislation be adopted and asks for your support. Thank you.

Adopted.

Ordered to third reading.

HB 443, relative to the statute of limitations for fire code violations. Judiciary Committee. Ought to pass, Vote 4-0. Senator Gottesman for the committee.

MOTION TO TABLE

Senator Gottesman moved to have HB 443 laid on the table.

Adopted.

LAIID ON THE TABLE

HB 443, relative to the statute of limitations for fire code violations.

HB 468, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff. Judiciary Committee. Ought to pass with amendment, Vote 3-1. Senator Gottesman for the committee.

Senate Judiciary

May 25, 2005

2005-1613s

08/10

Amendment to HB 468

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Protection of Persons from Domestic Violence; Permissible Contact. Amend RSA 173 by inserting after section 5 the following new section:

173-B:5-a Permissible Contact. A protective order issued pursuant to RSA 173-B:4 or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

2 New Paragraph; Stalking; Permissible Contact. Amend RSA 633:3-a by inserting after paragraph III-b the following new paragraph:

III-c. A protective order issued pursuant to this section, RSA 173-B:4, or RSA 173-B:5 shall not be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in an action brought under this chapter, or in any criminal proceeding concerning the abuse alleged under this chapter, from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protective order and informs the plaintiff that he or she has no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; ensures that any personal contact with the plaintiff occurs outside of the defendant's presence, unless the court has modified the protective order to permit such contact.

3 Effective Date. This act shall take effect 60 days after its passage.

SENATOR GOTTESMAN: Thank you, Mr. President. I move House Bill 468 ought to pass with amendment. This bill sets forth conditions under which permissible contact may occur between the agent of a defendant who is subject to a protective order and the plaintiff. The bill was brought forward to correct the Kidder decision that was issued by the New Hampshire Supreme Court. The strictness of the Kidder decision prevents an attorney from representing his or her client. The committee felt that it makes no sense to find an attorney, or someone else working on behalf of the defendant, would be found guilty of a violation of a protective order when they were not the actor to begin with. The committee amendment merely returns the bill more in line with the introduced version. The Judiciary Committee recommends that this legislation be adopted with amendment and asks your support. Thank you.

SENATOR BOYCE: Yes, if I could. My question is, in reading through this, it talks about the defendant's attorney and representative, but I am curious if there couldn't be some situation where let's say somebody filed suit for some reason, and the person they sued, who is now the defendant in that case, goes and gets a protective order against that person suing them. This then says that the one situation where the person being sued, the defendant has a...has a reason to see the other party. I am just wondering if this doesn't set up a situation where only one side is protected the other side...I don't know how often that happens, that somebody would file suit and somebody gets an order against them after the suit or during the suit or whatever...but...

SENATOR GOTTESMAN: I don't know whether I could give you...Thank you, Senator Boyce.

SENATOR BOYCE: I guess my question is, wherever it says "defendant", shouldn't it also say "or plaintiff"?

SENATOR GOTTESMAN: I think that, under the circumstances, we're talking about a particular kind of case where there has been a finding so that there is prohibited contact between the parties. And what happened under the Kidder case is, that a representative of the party, who was the attorney, made contact with the person who had the active order. That was considered a violation of law and became the center of some extreme controversy for the attorney. So the only idea is that, as the courts are trying to encourage you to make amends and to have contact and make deals in terms of resolving differences, there is no way

for that attorney to have contact with the individual who has the order outstanding. That is what this is intended to cure. The facts, as you present them, I think, are not facts that were contemplated, nor do I think they apply in this case, but that's just my interpretation.

SENATOR BOYCE: I'm just concerned that there might be, you know, that one case where it actually happens the other way and we've laid out the protection for the attorney in that...in this instance, but in a very similar instance, it wouldn't be.

SENATOR GOTTESMAN: I think...if I may, Mr. President, to respond. I think, under those circumstances, in light of the effect of the Kidder case, most attorneys would not have any contact without this kind of protection, and if it was questionable, they would probably apply to the court as they now have to do, to have any contact under those circumstances.

SENATOR BOYCE: Thank you.

SENATOR GOTTESMAN: Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Mr. President?

SENATOR EATON (In the Chair): Senator Burling?

SENATOR BURLING: Just a question. I believe I head you say, "486". Did you mean "468"?

SENATOR EATON (In the Chair): 468.

SENATOR BURLING: Thank you.

SENATOR EATON (In the Chair): Dyslexic.

HB 583, establishing an oversight committee to study medical malpractice insurance rates in this state. Judiciary Committee. Ought to pass with amendment, Vote 4-0. Senator Roberge for the committee.

Senate Judiciary

May 25, 2005

2005-1590s

01/09

Amendment to HB 583

Amend the title of the bill by replacing it with the following:

AN ACT establishing an oversight committee to study medical malpractice insurance rates in this state and requiring a hearing when medical malpractice insurance rates change.

Amend RSA 519-A:11, III as inserted by section 1 of the bill by replacing it with the following:

III. The members of the committee shall elect a chairperson from among the members. Four members of the committee shall constitute a quorum; provided, that no quorum is present unless at least one member of each body is present.

Amend RSA 519-A:11, VI(b) and (c) as inserted by section 1 of the bill by replacing it with the following:

(b) The committee shall make an interim report of its findings about medical malpractice insurance rates and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2006.

(c) The committee shall make a final report of its findings about medical malpractice insurance rates and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before December 1, 2008.

Amend RSA 519-A:12, I(c) by inserting after subparagraph (3) the following new subparagraph:

(4) Such other statistical information as the committee may request.

Amend RSA 519-A:12, II as inserted by section 1 of the bill by replacing it with the following:

II.(a) The insurance commissioner shall report to the committee, established in RSA 519-A:11, annually, on or before November 1 of each year, on the medical malpractice market in New Hampshire and the current rate levels and pricing of medical malpractice insurance products in New Hampshire. Such reports shall include, but not be limited to, average rate comparisons of medical liability insurance for categories of medical providers and specialties identified by the insurance commissioner, the frequency and severity of medical injury claims, the time for resolution of medical injury claims from first notice to final resolution, and other factors influencing the pricing of medical malpractice insurance products.

(b) The insurance commissioner is authorized to compel the production of documents from carriers that is required to provide the committee with requested information. To the extent the commissioner collects information from insurers regarding individual claims, loss adjustment and other expenses, reserves, indemnity payments, or other financial information that is not otherwise reported to the commissioner and available to the public, such information shall be treated as examination materials, kept confidential and not be subject to RSA 91-A.

Amend the bill by replacing section 3 with the following:

3 New Paragraph; Rate Filings; Medical Malpractice. Amend RSA 412:16 by inserting after paragraph XIII the following new paragraph:

XIV.(a) For medical malpractice insurance, regardless of whether the market is competitive or noncompetitive, the commissioner shall notify the public of any filing for a rate change when the proposed rate adjustment increases the then applicable rate by more than 15 percent or when the proposed rate adjustment decreases the then applicable rate by more than 15 percent.

(b) The commissioner shall hold a hearing on the rate adjustment upon receipt of a timely request.

(c) The rate change shall be deemed approved under rules established according to the provisions of RSA 412:43 unless the rate filing is disapproved by the commissioner.

(d) Public notice under subparagraph (a) shall be made through distribution to the news media and to any member of the public who requests placement on a mailing list for that purpose.

4 New Paragraphs; Rulemaking Authority. Amend RSA 412:43 by inserting after paragraph II the following new paragraphs:

III. The commissioner shall adopt rules under RSA 541-A relative to the conduct of hearings under RSA 412:16, XIV which shall include the definition of a timely request for a hearing, timelines for scheduling hearings, and procedures to prevent delays in commencing or continuing the hearings.

IV. The commissioner shall adopt rules under RSA 541-A relative to time periods for approvals of filings under RSA 412:16, XIV.

5 Effective Date.

I. Sections 1 and 2 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect 60 days after its passage.

2005-1590s

AMENDED ANALYSIS

This bill establishes a statutory oversight committee to study medical malpractice insurance rates in this state.

This bill also requires the commissioner of insurance to hold a public hearing, if requested, when medical malpractice insurance rates change by more than 15 percent from the currently applicable rates.

SENATOR ROBERGE: Thank you, Mr. President. I move House Bill 583 ought to pass with amendment. This bill establishes an oversight committee to study medical malpractice insurance rates. Regardless of the final outcome on any of the other bills dealing with this serious matter impacting medical malpractice insurance rates in our state, we know that there will still be unresolved issues. This bill establishes a study committee and authorizes the Insurance Department to obtain needed data in order to really look at the factors that may be affecting these rates. The committee amendment changes the dates so that the work will be completed within the next biennium. The amendment also includes a previously adopted Senate position that permits an aggrieved person to request a public hearing if an insurer requests a rate increase or decrease in excess of 15 percent. This right has been shown to moderate tax...rate increases in other jurisdictions. The Judiciary Committee recommends ought to pass as amended. Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 126, relative to a public employee right of free speech. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 5-1. Senator Larsen for the committee.

Public and Municipal Affairs

May 25, 2005

2005-1620s

06/05

Amendment to HB 126

Amend the title of the bill by replacing it with the following:

AN ACT relative to public employees' right of free speech.

Amend the bill by replacing all after the enacting clause with the following:

1 Freedom of Expression; Public Employees. Amend RSA 98-E:1 to read as follows:

98-E:1 Freedom of Expression. Notwithstanding any other rule or order to the contrary, a ~~[person employed by the state]~~ **public employee** in any capacity shall have a full right to publicly discuss and give opinions as an individual on all matters concerning ~~[the state and its policies]~~ **issues of public interest**. It is the intention of this chapter to balance the rights of expression of the employee with the need of the ~~[state]~~ **public employer** to protect legitimate confidential records, communications, and proceedings.

2 New Section; Definitions. Amend RSA 98-E by inserting after section 1 the following new section:

98-E:1-a Definitions. In this chapter:

I. "Employee" means any person employed by a public employer except:

(a) Persons elected by popular vote.

(b) Persons whose duties imply a confidential relationship to the public employer.

II. "Employer" means the state and any political subdivision thereof, the judicial branch of the state, any quasi-public corporation, council, commission, agency or authority, and the state university system.

3 Interference Prohibited; State Employee Changed to Public Employee. Amend RSA 98-E:2 to read as follows:

98-E:2 Interference Prohibited. No person shall interfere in any way with the right of freedom of speech, full criticism or disclosure by any ~~[state]~~ **public** employee.

4 New Section; Hearing and Remedies. Amend RSA 98-E by inserting after section 4 the following new section:

98-E:5 Hearing and Remedies. Any employee who alleges a violation of rights under this chapter and who has first made a reasonable effort to maintain or restore his or her rights through any grievance procedure or similar process available at his or her place of employment may obtain a hearing before the superior court. Following the hearing, the court shall render a judgment on the matter, and shall order, as appropriate, reinstatement of the employee, payment of back pay, fringe benefits, and seniority rights, any appropriate injunctive relief, or any combination of these remedies.

5 Effective Date. This act shall take effect January 1, 2006.

2005-1620s

AMENDED ANALYSIS

This bill protects a public employee's right to speak about issues of public interest and provides remedies for a violation of the right.

SENATOR LARSEN: Thank you, Mr. President. I move House Bill 126 ought to pass with amendment. House Bill 126 protects a public employee from discharge or discrimination when the public employee has spoken about a matter of public interest concerning his or her employment. Protected speech does not include speech that divulges trade secrets, patents, or certain other confidential information, or information from a fiduciary relationship. The amendment simply places this bill into statute under the RSA where state employees are currently protected and adds potential remedies as well. The Attorney General's Office as well as Commissioner...Assistant Commissioner Earl Sweeney of the Department of Safety, endorses this bill as amended. The Public and Municipal Affairs Committee recommends a vote of ought to pass with amendment on this bill. Thank you.

MOTION TO TABLE

Senator Martel moved to have HB 126 laid on the table.

Adopted.

LAID ON THE TABLE

HB 126, relative to a public employee right of free speech.

HB 168, relative to the licensure of electrologists and establishing an electrology advisory committee. Public and Municipal Affairs Committee. Ought to pass, Vote 6-0. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 168 ought to pass. House Bill 168 makes various changes to the regulation of electrologists by the Commissioner of Health and Human Services as well as establishes the Electrology Advisory Committee. The statute that originally created the Electrology Board did not give the Board enough power to create this committee nor broad enough powers to create the testing and licensing policies they are looking to create. The Public and Municipal Affairs Committee recommends a vote of ought to pass, and I thank you, Mr. President.

Senator Morse offered a floor amendment.

Sen. Morse, Dist. 22

June 2, 2005

2005-1780s

08/10

Floor Amendment to HB 168

Amend the title of the bill by replacing it with the following:

AN ACT relative to the licensure of electrologists and establishing an electrology advisory committee, and relative to the definition of tanning device operator.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 7:

6 Tanning Device Operator; Definition Change. Amend RSA 313-A:1, XI-a to read as follows:

XI-a. "Operator" means a person age [18] **16** or older who has received training through a program approved by the board in the safe operation of tanning devices, operates the tanning device, controls the length of the exposure to UV light, and instructs the consumer in the proper use of the device.

2005-1780s

AMENDED ANALYSIS

This bill makes various changes to the regulation of electrologists by the commissioner of health and human services and establishes the electrology advisory committee.

This bill also reduces the permissible age of a tanning device operator from 18 years to 16 years.

SENATOR MORSE: Thank you, Mr. President. I would like to offer amendment number 1780s. I offer up an amendment that on the tanning device operator definition. I heard from a constituent that their children that are working at their place right now, which is certified, and I guess I probably shouldn't call them children. These are 16 and 17 year olds that can't work in the business anymore. They were notified by the

state about a month ago. I went to the sponsor in the Senate and I went to the sponsors in the House, and asked them about the operator piece because there were two parts to this. There was the actual usage of a tanning device and the operator piece. And they all agreed that, on the usage, they had strong language and they want to keep it. They had strong language on the definition of an operator, but I don't think there was an intent there not to let a 16 and 17 year old run this operation. As long as they were certified. So I offer an amendment that basically says if they go through the process of being certified and they are 16 and 17 years old, they can run these devices.

SENATOR LARSEN: I rise to speak in support of the floor amendment. I worked on the tanning bill which this original language came through requiring an operator to be 18 years of age. The discussion at that time was that an 18 year old would be capable of receiving training, yet it was not something which the proponents of the bill I believe, felt as strongly about so many other portions of the tanning bill that passed. The option for an operator to be 16, but receive training, I think, is a reasonable one, and I don't see any reason not to pass this amendment.

SENATOR BURLING: Thank you, Mr. President. I rise with some uncertainty, but I do want to say that one of the things I've noticed as a difference between the performance in the House and here in the Senate. In the House, when a committee deliberates on a bill, it comes to the floor with a certain aura of respect and shall we say, even approval. Here we seem to be in a pattern where the committee comes up with an idea, presents it, and it's roughly an analogous to a clay pigeon in a shooting gallery. I wanted to make the point that we really did work on this issue in committee. We are talking here about the amendment, right? I'm getting signals. This is the amendment about 16 year olds in tanning parlors. What I wanted to say was the committee did work diligently on this issue. There were several of us who had concerns about changing the law to bring young people into closer contact with tanning machines. There were safety concerns. That's what led us to the original objection of this idea in committee, and I remain concerned about how many young teenagers we want to have operating these machines in tanning parlors.

SENATOR KENNEY: Thank you, Mr. President. I rise in support of Senator Morse's floor amendment. I have a friend who has a 24-hour tanning booth operation, who runs it in Somersworth and also in Portsmouth. In his situation as a small business owner, he sees it as a benefit from both sides as an employer and as an employee. As an employer, he obviously can engage young people into becoming certified and also to provide them an opportunity for summer employment. There are labor laws that suggest that they have certain hours that they can work and certain hours that they can't work past. But I think the bottom line is that this is a good opportunity for young people to be employed in a relatively safe environment, with the correct supervision, and I would encourage the Senate and the body to support this amendment.

SENATOR MARTEL: Thank you, Mr. President. I, too, rise in support of amendment 1780, brought out by Senator Morse. When we discussed this in committee, there are always those issues that we're not really totally informed about. The idea was that we had no idea what the impact would be on those 16 year olds who would lose their jobs. There were too many risks here, especially those young people who are working in these facilities, to go out and probably not be able to find any

employment any other place. I think it's a small risk to take to protect a very sizable piece of the population of young people, to amend this bill, and to allow Senator Morse's amendment to come in to add them in. So I, too, am in support of the amendment and I urge everyone to vote in favor of it. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

Recess.

Out of recess.

HB 359, defining "unnecessary hardship" for purposes of zoning variances. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Martel for the committee.

Public and Municipal Affairs

May 25, 2005

2005-1615s

06/09

Amendment to HB 359

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Powers of Zoning Board of Adjustment; Unnecessary Hardship Defined. Amend RSA 674:33 by inserting after paragraph I the following new paragraph:

I-a.(a) For purposes of this section "unnecessary hardship" shall mean that because of the unique and particular characteristics of a property, its setting, and environment, the board finds that:

(1) The property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable and economically viable use of it; or

(2) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, the proposed use is a reasonable one, and the grant of a variance will not injure the public or private rights of others.

(b) "Unnecessary hardship" as defined in subparagraph (a) shall apply to both use variances and area variances.

2 Effective Date. This act shall take effect upon its passage.

SENATOR MARTEL: I'll try not to sound ignorant. Are we still doing 359, right? That's where we are? Thank you very much. Thank you, Mr. President. I move that House Bill 359 ought to pass. House Bill 359 defines the unnecessary hardship for a zoning variance as an application for an ordinance that denies the landowner a reasonable and economically viable use of property or one that has no fair or substantial relationship between the public and the purposes of the ordinance and its application to the property. The bill also provides that a variance shall not injure the rights of others. This bill is the result of some recent cases of litigating from the courts that was brought forward to help clarify use and area variances. The Public and Municipal Affairs Committee recommends a vote of ought to pass with amendment for this bill, and I thank you very much, Mr. President.

PARLIAMENTARY INQUIRY

SENATOR BURLING: Parliamentary inquiry of you, Mr. President. Mr. President, in the course of the brief recess before the lunch break, we discovered that there was a typo in the committee amendment as printed in the journal. I have prepared a correcting amendment to take care of that typo. At what time should I bring that forward?

SENATOR EATON (In the Chair): We would have to either vote up or down the first amendment before you could bring the second amendment in. You might want to...if you wish to speak on the full bill, you're more than welcome to do that, but we're going to be voting on the amendment before we do anything else.

SENATOR BURLING: So then, Mr. President, if I were to encourage everybody to adopt the committee amendment and then bring forward my corrective amendment, then we could debate the bill as the committee intended it, right?

SENATOR EATON (In the Chair): Correct.

SENATOR BURLING: Thank you.

Amendment adopted.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

June 2, 2005

2005-1793s

06/01

Floor Amendment to HB 359

Amend RSA 674:33, I-a(a)(1) as inserted by section 1 of the bill by replacing it with the following:

(1) The property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable and economically viable use of it; and

2005-1793s

AMENDED ANALYSIS

This bill defines an unnecessary hardship for a zoning variance as an application of the ordinance that denies the landowner a reasonable and economically viable use of a property and one that has no fair and substantial relationship between the public purposes of the ordinance and its application to the property. This bill also provides that a variance shall not injure the rights of others.

SENATOR BURLING: Thank you, Mr. President. Mr. President, in perusing the bill, a number of us noticed that just prior to lunch, that the conjunctive which ties section A to section B is "or" and it ought to be "and". And to that effect, I offer and ask support for floor amendment 1793s, which inserts the word "and". That's all it does is change the typo which got the wrong conjunctive in there.

SENATOR FOSTER: Question of Senator Burling if I might. What I understand the amendment does and what the bill was supposed to do, was to bring the standard here back to what was adopted under the Simplex decision. And the Simplex decision had various items that had to be met to obtain a variance, and all of them had to be met. All you are doing is

making it consistent with Simplex. Whether or not we like that policy, we maybe ought to debate that in the context of the bill, but you're trying to make it consistent with the Supreme Court decision.

SENATOR BURLING: Senator, that's exactly right. This is one of those times when we have...which sounds like a complicated, but it is a straightforward policy decision. What we are asking you to do is let us get this corrective amendment in place, then we will debate the pros and cons of whether we want to do this. And there are two positions. One that sort of weighted in favor of the municipality. The other that's sort of weighted in favor of some of the developers. And what we want to do is just get it clear. Senator Gottesman and I will try to present the issues to you in debate and then make your choice. That's what we ask.

SENATOR FOSTER: Thank you.

Floor amendment adopted.

The question is on the motion of ought to pass as amended.

SENATOR BURLING: Thank you, Mr. President. I'll do this as quickly as I can and hopefully as clearly as I can. This bill came to us in large part because one of the more well known land use lawyers in the state of New Hampshire had an objection to what he described as judicial legislating that took place in the case of Michael Boccia versus the City of Portsmouth. I'll come back to that in a minute. The issue is, how do you define, for the purposes of zoning variance, the doctrine of undue hardship in the statutory law so that landowners get fair access to use their land as they will, and municipalities get access to fair and understandable regulation? A few points were made to us in committee, which I want to recite here. First, zoning variation law is statutory. It is not based on the common law or on the Constitution of the state. The Supreme Court has been deciding cases largely on the issue of procedural due process for many years. And recently, in a decision that was handed down in May of 2004, they made a significant change in the test to be applied to a zoning variation focused on "area restriction". This is not "use restriction", it's not like saying "You can't have a stable in the middle of a residential zone." This is "area regulation" which talks to how much of the area owned by the landowner can be covered by the use that's intended. What the attorney who appeared before us as the proponent of this bill wanted us to think about was the concept of going back to what's called the Simplex Decision. It's an earlier decision of this same court, which applied a...it's in essence, a five-part test. Planning boards are to use that test in determining whether or not a hardship exists, undue hardship exists, sufficient to support a variance. There were two lawyers who appeared before the committee. One who made a very persuasive case in favor of the adoption of this bill, and one who made a slightly less persuasive case for the rejection of the bill. In essence, this is a question, a) whether the Supreme Court really did kind of wander into legislating when it adopted the Boccia decision, and b) whether, if they did get into legislating, should we go back to the earlier Simplex standard which had been the law of the state of New Hampshire for several years before the Boccia decision came down? The majority of your committee listened to the testimony, weighed the evidence before us, and voted 6-0 in favor of adopting the "let's go back to Simplex text." We thought it was clearer. We thought it was more understandable. But this Senate is free to make its own choice, and Senator Gottesman is now going to present the other side of this discussion if he is recognized to do so.

SENATOR GOTTESMAN: Thank you, Mr. President. First of all, I want to apologize to the committee who made this recommendation, because I have had absolutely no input into your committee on this issue. I respect the work of the committee and I understand that you had testimony before you, but I hope to bring to you a little different perspective than you may have heard. I happened to be lucky enough to represent a lady whose name was Mary Belanger in 1981 when her house on Main Street in Nashua, New Hampshire, became surrounded by a number of businesses. And all Mary wanted to do was use her property where she lived, and also ran a tiny two-room real estate office, to expand the real estate office so that she could do a little additional business. That case was ruled in Mary's favor and became the beginning of the trend of cases which evolved into Simplex a few years ago. The Simplex case is a case which stood for the point that when everything around you is changing, just like Mary Belanger's neighborhood was changing, that you should not be restricted from doing what seems very logical. And, you may remember that the area around Newington developed in a very extraordinary manner during the period of the '80s and the '90s, and it was requested that a type of development, which was a commercial use, be allowed in an industrial zone. The end of the day, the court made a ruling, and they allowed this development to occur. That had to do with a "use" variance. That is, can we use this particular property for a particular kind of use? The Boccia case addressed several different areas. And that is, we have to look at the confines of what a person can use a particular property for, and when they want to use that property, can we give them a little room to vary from what's required in our city ordinances to allow them to develop the property in a proper way? That case established that there was another way to look at these properties, not separately in all cases, but there are sometime separate issues for particular properties. This whole process was reconfirmed in a case which was rendered by the Supreme Court April 4, 2005, where they again explained in the Harrington versus the Town of Warner case, the two different types of variances. I won't bore you with them, but they explain exactly what I just said about an "area variance" and they explained again what they meant about a "use variance". They confirmed both of the former cases. The result in that case was a little different because it was an abutter who was complaining about the use of the property. They actually found, along with the same elements, they found that the variances were not properly granted. So, the courts have followed this logic of the cases as it has progressed, and the law is evolving to the hearing. Two people come to the hearing. One is a guy who is representing the municipalities and has a special interest in making sure that things don't get "out of hand", and I use the "out of hand" in quotes. They're not winning all the cases they think they should be winning, because people who have owned land for a period of time and want to develop their property, whether it's a home and they need a variance, whether it's a commercial property, or an industrial property. They need the help with trying to make the most out of what they have to get the property developed. So as I look at this particular case, and the amendment as has been approved, you're now asking people to be treated to forget about use and area variance differential. So, they want to eviscerate what has happened in the Supreme Court so far, and you now are only going to be able to get a variance on a property if the property cannot be used for any other legal purpose. So, if you have a home with some other available property and it can be used as a home, you cannot...and

you need a little bit of a variance, you cannot subdivide that for any purpose whatsoever, and that goes for our subdivisions, that goes to our real estate trusts, that goes industrial land and it is going to put a hamper on the business of our state. So I would urge you to vote down the amendment, and I would urge you to vote down the bill as introduced. Thank you.

SENATOR EATON (In the Chair): Just for a point of clarification, the amendments are all adopted, so it's either an up or down vote on the bill.

SENATOR GOTTESMAN: Thank you, Mr. President.

SENATOR BURLING: Are we in voting mode already?

SENATOR EATON (In the Chair): No, if you wish to make a statement, we are not in voting mode yet.

SENATOR BURLING: I just wanted to make one concluding point which I think supports both sides. However this vote comes out, the legislature is going to move back into the proper position. Since zoning variances are the creation of legislative law, we should be the ones who set the terms under which they are created and varied. So we are doing what we ought to do, whichever choice you make.

The question is on the motion of ought to pass as amended.

A roll call was requested by Senator Gottesman.

Seconded by Senator Clegg.

The following Senators voted Yes: Johnson, Kenney, Burling, Green, Roberge, Larsen, Barnes, Martel, Estabrook, Fuller Clark.

The following Senators voted No: Gallus, Boyce, Odell, Eaton, Bragdon, Gottesman, Foster, Clegg, Gatsas, Letourneau, D'Allesandro, Morse, Hassan.

Yeas: 10 - Nays: 13

Motion failed.

Senator Clegg moved inexpedient to legislate.

Adopted.

HB 359 is inexpedient to legislate.

Senator Flanders is absent for the vote on HB 359.

HB 437, relative to the disposition of municipal records. Public and Municipal Affairs Committee. Ought to pass with amendment, Vote 6-0. Senator Kenney for the committee.

Public and Municipal Affairs

May 25, 2005

2005-1629s

05/03

Amendment to HB 437

Amend the title of the bill by replacing it with the following:

AN ACT relative to the disposition of municipal records and relative to rules governing records management.

Amend the bill by inserting after section 5 the following and renumbering the original section 6 to read as 8:

6 Department of State; Records Management and Archives, RSA 541-A Exemption. Amend RSA 5:40 to read as follows:

5:40 Rules. The director, under the supervision of the secretary of state, shall establish a manual of uniform rules necessary and proper to effectuate the purpose of this subdivision. Such rules and any subsequent revisions, when approved by the governor and council, shall be binding upon all officers and employees of the state. Any rules adopted pursuant to this section shall be ~~[adopted in accordance with]~~ **exempt from RSA 541-A.**

7 New Subparagraph; Administrative Procedure Act; Exemption; Manual of Rules for Record Management and Archives. Amend RSA 541-A:21, I by inserting after subparagraph (y) the following new subparagraph:

(z) RSA 5:40, relative to the manual of rules for records management and archives.

2005-1629s

AMENDED ANALYSIS

This bill codifies the retention schedule for municipal records, establishes criteria for the retention of electronic records, and makes related technical changes to the law governing the disposition of municipal records. The bill also exempt rules governing records management and archives from the requirements of RSA 541-A, the administrative procedure act.

The bill is a request of the secretary of state.

SENATOR KENNEY: Thank you, Mr. President. I move House Bill 437 ought to pass. House Bill 437 codifies the retention schedule for municipal records, establishes a criteria for the retention of electronic records, and makes related technical changes to law governing the disposition of municipal records. This bill was sponsored on behalf of the Secretary of State. I would just ask the body if they would strike down the amendment. Again, I'll say that for a second time. If you would strike down the amendment, that would allow us to stay within our current boundaries of agencies going through JLCAR when it comes to rules. In this case, rules that concern record retention. Thank you, Mr. President.

Amendment failed.

The question is on the motion of ought to pass.

Adopted.

Ordered to third reading.

HB 205, relative to licensing requirements for certain drivers. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 3-2. Senator Martel for the committee.

SENATOR MARTEL: Thank you, Mr. President. I move House Bill 205 ought to pass. House Bill 205 is intended to crack down on people who drive without a license or after their license has been suspended or revoked. This is also a housekeeping measure that synchronizes the expiration date of a probationary license to be the same as the expiration date of other driver's license. Section one of the bill says that the person convicted of driving without a license and committed another motor vehicle violation, except driving an un-inspected vehicle, driving an unregistered vehicle, or not having their registration with them, must wait twelve months before they can apply for a license. **TAPE CHANGE** 21. Please support the Transportation Committee's recommendation of ought to pass, and I thank you, Mr. President.

Senator Burling offered a floor amendment.

Sen. Burling, Dist. 5

Sen. Estabrook, Dist. 21

May 26, 2005

2005-1636s

03/09

Floor Amendment to HB 205

Amend the bill by replacing section 2 with the following:

2 Rules of the Road; Possession of Drugs; License Revocation for Youth Operator. Amend RSA 265:80 to read as follows:

265:80 Possession of Drugs. Any person who drives on any way a vehicle while knowingly having in his *or her* possession or in any part of the vehicle a controlled drug or controlled drug analog in violation of the provisions of RSA 318-B shall be guilty of a misdemeanor, and ~~his~~ *the person's* license shall be revoked or ~~his~~ *the person's* right to drive denied for a period of 60 days and at the discretion of the court for a period not to exceed 2 years. *If a person convicted under this section holds a youth operator's license, the court, in its discretion, may increase the period of revocation for any period of time up to the period it will take for the person to reach 21 years of age.*

2005-1636s

AMENDED ANALYSIS

This bill:

I. Restricts the ability of an unlicensed driver convicted of a motor vehicle violation to obtain a license.

II. Establishes restrictions on the reissuance of a youth operator's license to a person convicted of certain drug and alcohol offenses.

III. Permits the court to extend the period of license revocation for youth operators convicted of driving while possessing a controlled drug.

IV. Adds to the class of "at risk" drivers requiring probationary licenses those persons convicted of driving while in possession of drugs.

SENATOR BURLING: The floor amendment which is being handed out, Mr. President, represents an important, some would even say, the most important policy decision we're going to get to make today. At the heart of this debate is the question of who decides the penalty when a criminal act, involving a person with a minor's license takes place. The minority, those of us preparing and presenting to you this floor amendment, believe that it should be a judge, in a court of law who has heard the evidence, participated in the case, determined the yeas and nays and the pros and cons, and where justice lies, and we believe that it is a judge who should make the determination of the suspension of licenses. The majority have supported a bill which, without the amendment, transfers the authority to make those decisions about drivers' licenses suspension to the Department of Safety. There are a number of things I want to just tick off that really determine my position on this. I believe in our system of justice. For 800 years, the English speaking people of this world have helped perfect one of the most effect criminal justice systems ever known to man. That is a system which relies on the presentation of evidence to a trier of fact, a pro and con, an adversarial process, a determination of guilt or innocence and an application of criminal penalty to a person who is found to be guilty. That is a single process and we should not begin to tear it apart and divide it up into multiple parts because

one agency of state government doesn't trust another state agency of state government to do the job right. The determination of whether or not a minor loses their license for having a person in the car who may have a particle of a joint or something else on their possession is an element of the criminal prosecution. The judge in the district court should be the one who makes the ultimate decision about the total penalty. And that penalty, where appropriate, should include the suspension of operating privileges until their twenty-first birthday. But, it is the judge who should also be the one who gets to say, "You know, this is a pretty thin case. This is a situation in which justice is on the side of forgiveness", and something other than a five-year suspension is merited in the facts of the specific case. I know I'm trained as a lawyer. I'm proud of it. I come from three generations of lawyers and there are two more generations after me that are all lawyers. We believe in the American system of justice. We believe in the concept of an independent judiciary where a judge makes these decisions. The amendment before you would preserve that critical element of our civic and civil government. I don't mistrust the people at the Department of Motor Vehicles. I just believe that we have an established principle here and the judge ought to be the one who makes this decision. To find otherwise does bring us very close to the notion of double jeopardy, and that is not a TV show, though it may sound like one. Double Jeopardy is the notion that one who is charged with a criminal act has to basically defend themselves twice for the same crime. Here we have a situation in which all of it should be treated as a singularity. The decision about punishment should be made in the courts, and if you adopt floor amendment 1636, that's what you will have. And let me just say by way of short circuiting something that may happen either today or in some future campaign, nobody is getting soft on crime in here. I believe that people who are found to have drugs in their possession should be treated harshly and thoroughly and judiciously. And I believe that's exactly what will happen in a court of law. I don't want to hear, in fact, I will be very offended if I hear, any citizen of New Hampshire suggest that, in standing up to defend our existing judicial system, I'm somehow going soft on the punishment of people who operate with drugs in the car. Nothing could be further from the truth. This is about making good on the promise that our society has held since 1776. This is about the American way of justice and it is appropriate for us to defend it, amend this bill, and then let's pass 24-0, the amended bill, which would be good for this state. Thank you, Mr. President.

SENATOR ESTABROOK: Thank you, Mr. President. I'd just like to rise and add one more argument in favor of this floor amendment. The bill unamended not only transfers that authority to DMV from the courts, but it also imposes a mandatory minimum. I know as a matter of policy, I generally oppose mandatory minimums. So not only are we taking it away from the discretion of the court, but we are taking away discretion in general. It does call for a hearing whereby the director of DMV can decide not to do anything. But if they decide to do something, the bill calls for a mandatory minimum. I don't think that's good policy. As Senator Burling said, I don't think justice should be blind. I think a judge should be able to hear the circumstances of each case and make a determination. So I would also urge you to support the floor amendment.

SENATOR LETOURNEAU: Thank you, Mr. President. With all due respect to my colleagues, I understand where you're coming from on this. However, this has got to do with administrative license suspension, which

we have already in this state, and we use for DWI and other such egregious crimes. Bear in mind that this says "the holder of a youth driver's license who is convicted under offense of RSA 265:80, 265:82 and 265:82a." These are possession of drugs, DWI, and aggravated DWI. We've been dealing...trying to deal with these problems of our youth getting killed on the highways for a number of years. This is another step in that process, trying to keep them safe and alive until they get to be twenty-one. Remember, these are under twenty. They're not even supposed to have alcohol. So this is an administrative license suspension. The court will deal with the criminal aspect with it. The department deals with the licensing aspect of it. Thank you.

SENATOR FOSTER: Senator Letourneau, I just want to make sure that we understand what we're voting on here. I just want to ask with a hypothetical and tell you whether it would apply, because I think I want to address what I think might be the concerns of some of the folks. The young person was driving a vehicle. Say it's a mini van or even a van. And some kid...and the car's pulled over for some reason and any kid in the car is found to possess drugs, would the bill as it is being proposed by the committee, automatically result in the driver license being suspended to the age of twenty-one? Because that's the way that I read it and I think that's why Senator Burling came forward with the amendment, so the judge could look at the circumstances, and not sort of be strict liability.

SENATOR LETOURNEAU: I think, in terms of our open container law, we work the same way on license administration. If you're the driver of the automobile, somebody in the back seat has an open container, the driver's responsible for it. The driver's responsible for what's in his car. The question that you are asking me...am I answering your question?

SENATOR FOSTER: You are by sort of ...by open container, but I guess the question is, if the driver doesn't know that somebody has drugs on their possession in the car, they may not even know the particular person. The way that I read it, it's not just the driver we are talking about, it's anybody in the vehicle. The driver becomes responsible for anybody in the vehicle.

SENATOR LETOURNEAU: I would add, Senator, that lines 15-17, that the license suspension would be...could be returned if the person satisfies the director after administrative hearing, and the person will drive in a safe manner. I am also assuming that evidence would be brought up in a court of law and whether or not they were found...they have to be found guilty first before this take effect. So we are talking about something that's already been determined as a guilty finding in court, and this is an administrative license suspension that follows that. I hope I'm explaining it properly.

SENATOR FOSTER: You are. Thank you.

SENATOR LETOURNEAU: Thank you.

SENATOR ESTABROOK: Thank you, Mr. President. Senator Letourneau, I wonder if you could tell me...you brought up the issue of the open container. The person in the back seat and I'm up front driving...has an open container. That I'm liable. If I have a youth operator license, under those circumstances, do I lose my license until I'm twenty-one?

SENATOR LETOURNEAU: I don't think it calls for that here.

SENATOR ESTABROOK: Is that the mandatory penalty?

SENATOR LETOURNEAU: I don't think that calls for that here.

SENATOR ESTABROOK: No, I'm asking under existing law.

SENATOR LETOURNEAU: Under existing law, you lose your license.

SENATOR ESTABROOK: Until I'm twenty-one?

SENATOR LETOURNEAU: No.

SENATOR ESTABROOK: Thank you.

The question is on the adoption of the floor amendment.

A roll call was requested by Senator Burling.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Burling, Gottesman, Foster, Larsen, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Green, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

Yeas: 9 - Nays: 14

Floor amendment failed.

Senator Flanders is absent for the vote on HB 205.

The question is on the motion of ought to pass.

A roll call was requested by Senator Foster.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus Johnson, Kenney, Boyce, Burling, Green, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, D'Allesandro, Morse, Hassan, Fuller Clark.

The following Senator voted No: Estabrook.

Yeas: 22 - Nays: 1

Adopted.

Ordered to third reading.

Senator Flanders is absent for the vote on HB 205.

HB 261, relative to title to salvage vehicles. Transportation and Interstate Cooperation Committee. Ought to pass, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 261 ought to pass. This bill says that when a car is five years old or older, and received 75 percent or more damage to the body, it must have a salvage title. This bill would help clarify any confusion about the state salvage title laws. The Transportation and Interstate Committee asks for your support of ought to pass. Thank you.

Adopted.

Ordered to third reading.

HB 302, relative to the mileage rate for service of documents by county sheriffs. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 5-0. Senator Letourneau for the committee.

SENATOR LETOURNEAU: Thank you, Mr. President. I move House Bill 302 inexpedient to legislate. This bill allows the mileage fee for

service of writ, notice, subpoena, process or execution, to be the average mile surcharge. The sponsor came to the committee and said there were too many problems with the legislation and asked the committee to find the bill inexpedient to legislate. Please support the committee recommendation of ITL. Thank you very much.

SENATOR BURLING: Thank you, Mr. President. I am sure all of my colleagues will know how shocked and amazed I was to learn that the county sheriffs couldn't make their costs work at 45 cents a mile.

Committee report of inexpedient to legislate is adopted.

HB 357, relative to negligent driving. Transportation and Interstate Cooperation Committee. Ought to pass with amendment, Vote 5-0. Senator Letourneau for the committee.

Transportation and Interstate Cooperation

May 25, 2005

2005-1608s

03/09

Amendment to HB 357

Amend the title of the bill by replacing it with the following:

AN ACT relative to negligent driving, relative to driver's license fees for nonresident aliens, and relative to motor vehicle inspection expiration.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 5:

2 License Expiration; Non-Citizens. Amend RSA 263:10 to read as follows:

263:10 License Expiration. Except as provided in RSA 263:14 *and RSA 263:39-a, III*, all licenses shall expire on the fifth anniversary of the license holder's date of birth following the date of issuance. The department shall notify each holder of a license by mail addressed to the holder's last known address, 30 days prior to the expiration date thereof of a place and time when he or she shall appear for the issuance of a new license.

3 Driver's License Fees; Aliens Temporarily Residing in New Hampshire. Amend RSA 263:42, I to read as follows:

I. For each original driver's license and examination or driver's license renewal, other than for a commercial vehicle or motorcycle- \$50; for each youth operator's license and examination- \$10 per year, not to exceed \$50; *for each license issued to a nonresident alien for less than 5 years- \$10 per year or portion thereof*; for each original commercial driver license and examination or commercial driver license renewal- \$60; for each commercial driver license reexamination in a one-year period- \$20; for each commercial vehicle endorsement, renewal of an endorsement, or removal of a restriction- \$10; for each special motorcycle original license and examination or special motorcycle license renewal- \$50; for each original motorcycle endorsement- \$25; for each motorcycle endorsement renewal- no charge. For each original driver's license issued, \$5 shall be credited to the driver training fund established by RSA 263:52. Except as provided in RSA 263:14 *and RSA 263:39-a, III*, every license shall expire on the licensee's birthdate in the fifth year following the issuance of such license. No fee collected under this paragraph shall be refunded once an examination has been taken or a license issued, except as provided in RSA 263:43.

4 Vehicle Inspection; Expiration. Amend RSA 266:1, IV to read as follows:

IV. Notwithstanding paragraphs II and III, newly registered vehicles, other than [~~OHRVs~~] **OHRVs**, snow traveling vehicles, and mopeds, and vehicles, other than [~~OHRVs~~] **OHRVs**, snow traveling vehicles, and mopeds, the ownership of which has been transferred, shall be inspected not later than 10 days after the registration or transfer of ownership of said vehicle. However, if a vehicle is purchased at retail from a licensed dealer, as defined in RSA 259:18, [~~H,~~] the vehicle shall be inspected not later than 30 days after the date of transfer. A vehicle for which a dealer has issued a 20-day plate pursuant to RSA 261:109 shall be presumed to be capable of meeting the vehicle inspection requirements. ***All other expired motor vehicle inspections shall be subject to the 10-day grace period in RSA 266:5.***

2005-1608s

AMENDED ANALYSIS

This bill:

I. Establishes fines for persons guilty of negligent driving.

II. Authorizes the department of safety to prorate drivers' license fees for nonresident aliens.

III. Inserts a reference to the general grace period for motor vehicle inspections into the inspection provision for newly registered and transferred motor vehicles.

SENATOR LETOURNEAU: Thank you, Mr. President. I move HB 357 ought to pass as amended. This bill establishes fines for people guilty of negligent driving. The committee heard testimony that twenty-four percent of New Hampshire's fatalities were caused by driver inattention, an increase of six percent in the last two years. This legislation hopes to prevent further increases. Thank you very much and please support the committee recommendation of ought to pass as amended.

SENATOR BOYCE: I'll try to say this loud enough. Can you give us sort of a run down of what would be negligent driving? What kinds of things you'd have to do to be negligent driving?

SENATOR LETOURNEAU: Okay. I thought it was explained pretty well in the bill. We have a negligent driving statute on the books, and what this basically does is raises the fine from...a fine of not less than \$250, not more than \$500 for the first offense, and not less than \$500 or more than \$1,000 for the second or subsequent offense. Basically what we're changing is the fine structure on it. Negligent driving is in the statute on the books, and I can get you that statute if you'd like.

SENATOR BOYCE: I'm just trying to satisfy myself that this penalty really fits all of the things that could be included. I'm curious, is it negligent driving if I'm trying to answer my cell phone and I wander between lanes? Is that negligent? If there is somebody in the next lane, is that negligent driving? Or do I have to get into an accident because of that?

SENATOR LETOURNEAU: If you cause somebody to run off the road, I think it could be considered negligent if you run somebody off the road.

SENATOR BOYCE: I'm just...I'm just not convinced that we are, you know, not going a little beyond...this may be a little more than necessary.

SENATOR LETOURNEAU: Senator Boyce, we're not changing...as far as I know, we are not changing the definition. We're just increasing the fines.

SENATOR BOYCE: I realize we are just increasing the fine. I'm just wondering if we are going a little too high on the fine.

SENATOR LETOURNEAU: I guess the committee doesn't think so.

SENATOR BOYCE: Thank you.

Amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HB 573, establishing a commission to study automobile recycling issues, including disposal fees. Transportation and Interstate Cooperation Committee. Inexpedient to legislate, Vote 3-2. Senator Martel for the committee.

SENATOR MARTEL: Excuse me, Mr. President, I just hit my microphone. I move House Bill 573 inexpedient to legislate. This bill establishes a commission to study automobile recycling issues, including disposal fees. After careful consideration, the Transportation Committee decided that this commission need not happen at this time. Please support the committee recommendation of inexpedient to legislate, and I thank you, Mr. President. I hope I didn't wake anybody up when I hit my microphone.

SENATOR ESTABROOK: Thank you, Mr. President. I rise in opposition to the committee's recommendation of ITL and I ask Senators to overturn that motion so that I can introduce a floor amendment. The amendment would remove the Senate members and broaden the scope of the study that was called for. As it came to us from the House, this study was focused on automobile disposal and recycling fees. The language of the study would have presupposed that there would be such a fee, and I agree that we should not undertake a study that jumps to a conclusion like that. But, on the other hand, there was ample testimony to conclude that we do have a problem with disposal of old vehicles. I therefore believe that we should broaden the scope of this study, as my amendment does, and use it as an opportunity to figure out what are we going to do going forward. The Department of Environmental Services testified that the current system is not working and that safe salvage practices are critical to protecting the environment, public health and safety. They are strongly in favor of this study. And maybe that's because there are a long list of toxic substances needing disposal in the process of vehicle salvage. MTBE, mercury, others that this Senate has treated as serious environmental threats. In fact, when you bring a car to salvage at the end of its life, the person dealing with it is dealing with petroleum, hydrocarbons, which are toxic to aquatic life and suspected as carcinogens. Heavy metals, lead, cadmium, chromium, zinc, copper, nickel, aluminum, arsenic, and mercury. Acids from batteries, solvents and degreasers. And suspended solids such as heavy metals. Sounds like some pretty serious stuff, not something that we should just brush off and say we are not even going to take a look at. The amendment that I will offer takes out the Senators from the commission, so you can support the amendment without adding to your own or your colleagues' workload. The amendment calls for only the House members to receive mileage, so there's no cost to the study. And I really can't understand, with the backing of the Department of Environmental Services, the backing of the auto salvage people themselves, who say we have a problem and we better take a look at this, why we wouldn't want to take a look at it. So I ask you to overturn the ITL so we can entertain the floor amendment. Thank you.

SENATOR LARSEN: I, too, rise to oppose the inexpedient to legislate motion and ask you to consider the floor amendment. Anyone looking at the hearing report can see that the auto and truck recyclers came to speak of it, and they said they didn't think the focus should be on fees, but should be in fact, on what's going to happen in the future to recycling of cars. There was Pamela Sprague from the DES who also talked about the problems of recycling disposal. There was a speaker who testified that it took over ten hours to remove airbag systems. And it also notes that, even in the town of Claremont, Claremont does not accept cars with fluids in them. So they find that the road up to the shredder is covered in car fluid stains as the people dump fluids in order to get it acceptable into the shredder. Clearly, it's a problem. It's one which all of those in the industry are telling us is a problem. It's time to create this study and work on what is the solution that satisfies the needs of a complicated dismantling and recycling of very complicated machines. So I urge you to consider your vote carefully because I think this is truly a system which needs to be looked at in the next few years.

SENATOR BARNES: Of the Chairman of the Committee, Senator Letourneau. Senator Letourneau, we just heard some compelling stories about what happened in your committee for hearings. The salvage people who this affects came in, and they're in favor of it. Can you explain to me how come it came out inexpedient to legislate? I know you already did that with your blurb, but maybe you can be a little more specific.

SENATOR LETOURNEAU: The committee felt that there are pretty heavy regulations on salvage yards already, both federal and state regulations. And the study committee was redundant. We didn't hear testimony on this proposed amendment.

SENATOR BARNES: So the committee felt that it's too much regulation on it now?

SENATOR LETOURNEAU: They didn't feel like there's too much regulation, they felt that as though it was highly regulated by state and federal.

SENATOR BARNES: Thank you very much, Senator.

SENATOR LETOURNEAU: All the MTBE, the gasolines, the anti-freeze, the batteries, the mercury and the displays and the airbags have to be taken out of the vehicles. One of the complaints they were making was it is very expensive for them to do that.

SENATOR BARNES: Ah, the expense comes into it.

SENATOR LETOURNEAU: Yes. I think they were trying to get to the point where we are trying to get something...end of life fees.

SENATOR BARNES: Thank you very much.

SENATOR BURLING: Thank you, Mr. President. Senator, I rise as the other member of the minority that supports this study and the passage of the amendment to allow the study to go forward. We were very concerned 'cause we heard compelling testimony from people whose business it is to deal with this, that we have a problem that is growing in scope and we need a New Hampshire solution to deal with it. And I should say, you know when I was eighteen, I used to go down to the junkyard and pull a car out and get it started and drive it around for a while. Now if you go into the junkyard, you're dealing with exploding airbags, exploding bolts, mercury switches, poisonous gases. These are issues which demand a serious look by the New Hampshire people who know what

they're talking about. And they came to us asking for that chance. And that's why we believe this study should be allowed to go forward, particularly since we understand Senators may not have the time to do it, but the people who make their living doing this, do have the time to do it and need our support. Thank you.

SENATOR ESTABROOK: Yes, and I appreciate the chairman clarifying that the committee really did not entertain the amendment. Somehow in the process of the committee, the vote had pretty much been taken before the committee members became aware there was an amendment. So that is one reason why I am bringing it forward to the floor today, also. And I would like to request a division.

The question is on the committee report of inexpedient to legislate. A division vote was requested.

Yeas: 9 - Nays: 13

Motion failed.

Senator Estabrook moved ought to pass.

Senator Estabrook offered a floor amendment.

Sen. Estabrook, Dist. 21

May 25, 2005

2005-1598s

08/09

Floor Amendment to HB 573

Amend paragraph I as inserted by section 2 of the bill by replacing it with the following:

I. The members of the commission shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) The commissioner of the department of environmental services, or designee.

(c) The commissioner of the department of safety, or designee.

(d) The commissioner of the department of transportation, or designee.

(e) One representative from the Auto Recyclers Association of New Hampshire, appointed by said association.

(f) One representative from the scrap processors industry, appointed by the speaker of the house of representatives.

(g) One representative from the Alliance of Automobile Manufacturers, appointed by the speaker of the house of representatives.

(h) One representative from the New Hampshire Auto Dealers Association, appointed by said association.

(i) One representative from the New Hampshire Municipal Association, appointed by said association.

(j) One representative from New Hampshire the Beautiful, Inc., appointed by said corporation.

(k) One representative from the insurance industry, appointed by the speaker of the house of representatives.

(l) One representative from the New Hampshire chapter of the Sierra Club, appointed by said organization.

Amend the bill by replacing section 3 with the following:

3 Duties. The commission shall study the adequacy of the state's regulatory system and the industry infrastructure currently used to recycle

and dispose of end-of-life motor vehicles and to make recommendations for change, including but not limited to an end-of-life disposal fee, if current practices are determined to be inadequate for assuring sufficient capacity to manage end-of-life vehicles in a manner that protects environmental quality.

Amend the bill by replacing section 5 with the following:

5 Report. The commission shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2006.

SENATOR ESTABROOK: Thank you, Mr. President. I'd like to move ought to pass and introduce floor amendment 1598s. I think members have had a chance to look at it earlier, but now it's being passed around again. I think the most significant thing that it changes, if you look down to the duties statement, if you look at the original bill and you look at the duties statement on the amendment, it's very clear that we have taken the focus off the recycling fees and onto the problem in general. I hope that's something you can support. Thank you, Mr. President.

SENATOR LETOURNEAU: Senator Estabrook, I am just kind of curious. Could you tell me why we have one representative from New Hampshire the Beautiful and one representative from New Hampshire Chapter of the Sierra Club involved in auto recycling?

SENATOR ESTABROOK: I'm not sure what New Hampshire the Beautiful is, frankly, Senator. That came over from the House. The Sierra Club is something that I introduced into this because I think that a lot of these issues are environmental and we want to understand the impact in that regard, too.

SENATOR LETOURNEAU: Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

A roll call was requested by Senator Boyce.

Seconded by Senator Barnes.

The following Senators voted Yes: Burling, Green, Odell, Roberge, Bragdon, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Gallus, Johnson, Kenney, Boyce, Eaton, Clegg, Barnes, Martel, Letourneau, Morse.

Yeas: 13 - Nays: 10

Adopted.

Ordered to third reading.

Senator Flanders is absent for the vote on HB 573.

HB 522, establishing a committee to study gaming options for New Hampshire. Ways and Means Committee. Ought to pass, Vote 3-2. Senator D'Allesandro for the committee.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I move House Bill 522 ought to pass. House Bill 522 calls for an examination of the arguments on both sides of the issue and will help provide welcome direction to future policymakers. The committee recommends ought to pass on House Bill 522. Thank you, Mr. President.

The question is on the motion of ought to pass.

A roll call was requested by Senator Boyce.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Burling, Green, Eaton, Gottesman, Foster, Clegg, Gatsas, Barnes, Martel, D'Allesandro, Morse, Hassan, Fuller Clark.

The following Senators voted No: Kenney, Boyce, Odell, Roberge, Bradgon, Larsen, Letourneau, Estabrook.

Yeas: 15 - Nays: 8

Adopted.

Ordered to third reading.

Senator Flanders is absent for the vote on HB 522.

HB 535-FN-A, increasing the tobacco tax. Ways and Means Committee. Inexpedient to legislate, Vote 3-2. Senator Gallus for the committee.

SENATOR GALLUS: Thank you very much, Mr. President. I move House Bill 535 inexpedient to legislate. House Bill 535 will have a negative effect on the ability of retailers, particularly the many small businesses that make up New Hampshire's economic landscape, to survive in difficult economic times. Because every dollar in tobacco sales represents another three dollars in sales of other items, and because raising the tax will decrease sales and impair the profitability of small businesses. The committee recommends inexpedient to legislate on House Bill 535. Thank you.

SENATOR FOSTER: Thank you, Mr. President. I rise in opposition to the committee report. Most of you who know me know that there is a Senator from North Carolina who I admire quite a bit. He was up here in 2003, in the winter of 2004 quite a bit, and whenever he would speak about civil rights, he would say, "This is personal to me", because he lived it. Well, for me, this issue is personal. In 1989 my father died. He was born in 1930. Died about fifty-eight...at fifty-eight years of age. He never got to see me give a speech here. Never got to see me get elected to the Senate. Never got to see me married or my brother married. In fact, he only met one of his grandchildren, who's next year going to be going to college for the first time. He got diagnosed with lung cancer in 1984, and I can remember watching the World Series with him in '86. I think I have the year right. Some of you will correct me if I'm wrong. And as the ball went between Billy Buckner's legs, he said, "I'll never see the Red Sox win." And I don't know whether he would have been living now, but I can tell you that his two older brothers who quit smoking are still living. So for me, this issue is personal. And we talk about how much revenue we'll get or how much revenue we'll lose, or how businesses will fare on the border states, and people will also say this is unfair to smokers, this tax, because it singles them out. I have sympathy for the last issue, the smokers, because they are addicted. My father was addicted. But the other ones don't move me all that much frankly, because to me what this issue ultimately is about is trying to get people not to smoke. Now I am not naive, I know that if we raise this tax 28 cents or some other amount, smokers like my father probably wouldn't quit. Probably if we raised it a buck, smokers like my father wouldn't have quit. But what I do think will happen is that young people won't pick up smoking, so that thirty or forty years from now, somebody won't be having the

thoughts that I had back in 1989 or that I'm speaking about today. Because their parents won't have started and their parents will get to see them meet the milestones in life. So for me, the issue is personal. I oppose the committee report of inexpedient to legislate and hope to be able to move ought to pass. Thank you, Mr. President.

SENATOR FULLER CLARK: Yes, for Senator Foster. I wondered if you were aware that for every ten percent increase in the price of the pack of cigarettes, that there is a seven percent decrease in youth smoking?

SENATOR FOSTER: I've heard numbers like that and it doesn't surprise me to hear that and that's why I feel strongly about this.

SENATOR BURLING: Thank you, Mr. President. It's interesting how our experiences mirror one another. Martha Fuller Clark and I had known each other for two months when my dad died in 1959. He died of a heart attack brought on in large part by a life of smoking, and a life of smoking everything. So it's personal for me too. But I am standing up for another reason, Senator. That is I can't let the record continue to have the implication that little businesses on the borders lose business when we make a modest increase in the cigarette tax. I've lived in a border community all my life and I know the merchants and I know they worry about this, but there is no state or Canadian province that will tax less or sell cigarettes cheaper than New Hampshire will after we make this increase. We will continue to have an extraordinary competitive advantage on every border and in every place. And if you live where I do, on the western part of the state, you see New York plates all over the place all of a sudden. Because in New York, it costs \$75 a pack...a carton, to buy cigarettes. This is a responsible and important thing we do today, and I hope we will strike down the inexpedient to legislate and continue to preserve our revenue options as we try to craft a solution to the problems that face us.

SENATOR GREEN: Thank you, Mr. President. The record will show that I have voted in the past and will continue to vote against this raise in cigarette tax. Now, having said that, let me just say what my dilemma is today. My dilemma is that I know that the budget needs money to balance. If someone tells me if this cigarette tax fails where they're going to get the money, I'm listening, because you can't balance the budget, you cannot fulfill any education trust fund that we're willing to pass, unless you're willing to cut the distribution to all of our communities by \$87 million. I don't hear very many people happy with all of the spreadsheets they've seen. So it's either coming out of education, because we're going to turn it down, and nobody is ready to stand up here and give us an alternative to raise the money. And from what I know about what the Finance Committee has done, you people have done some severe cuts in Health and Human Services. So, I'm sitting here and I'm saying "how are we going to put this thing together?" Again, I'm being asked as a Senator, to piecemeal it, to make a decision about revenue without knowing that there is a alternative in place to take care of the lost revenues of \$87 million. I also happen to know, as all of you know, I hope, that this vote is meaningless. This is a vote so that people can go on record. When we all know, if we don't know, it's in the budget anyway, in House Bill 2. The cigarette tax as we're voting on now, regardless of what we do here, is in House Bill 2 and it was not taken out. So we're still going to increase the cigarette tax no matter how you vote today. Unless someone gives me a guarantee that they're going to take it out of the budget. So we are playing games. Someone tell me as a Senator, please, how

you're going to balance the budget if we don't pass the cigarette tax? I don't want to vote for a cigarette tax. I do not want to vote for that. I think it's the wrong way to go. But you tell me, please, somebody tell me, how you're going to raise \$87 million to balance the budget, which by the way, has already been severely cut? So, how you going to fund education? How you going to cut the budget? You got to raise the revenue. You can't have it both ways. Not raise the revenue and then not cut the budget. You cannot pass a budget that is not balanced. That's under the law. **TAPE CHANGE** tell me how your going to do it. We are playing games here people. Some people would like to be on record as saying "I voted against the cigarette tax", while at the same time, working for a budget that includes it. That's not honest. I'm sorry. It just is not honest to the voters. It's not honest to the taxpayers. Now, I don't mind you voting against the cigarette tax, but I also want to know how you're are going raise the revenue in order to balance the budget. I don't hear anybody talking about that. You all want to wait 'til the end so we can just forget about it and, if we vote against the cigarette tax today, that is the position of the Senate. It is. If you vote against it. We voted against, recently, I hope some of you will remember, against reducing or taking away the exemption for individuals on the phone bills, \$12. That was voted against...voted down in this chamber. That is the Senate position. But guess what? In the budget, they've canceled the exemption. So now the \$12 exemption for individuals is no longer there, yet the Senate voted in this chamber, to not do away with that exemption for people. I've heard a lot of arguments about phone bills going up. Sorry. It all comes together people. You can't have it both ways. And the big threat was, if you do away with an exemption for a corporation, the phone bill's going up \$2 a month, and everybody was in an uproar. But we give up \$12 a month in exemptions for individuals, and nobody wants to say a word. I'm sorry, it don't jive. Now either we are against the cigarette tax, and it's out of the budget, or we're not. Or, if we are for a cigarette tax, then let's vote for the cigarette tax and it's in the budget. I don't have a problem, but one way or the other, you can't have it both ways. You can't vote against the cigarette tax, and then behind the scenes, put it in the budget. It's not honest, and I just will not...I will not operate that way. I will vote against the cigarette tax 'cause I'm not in favor of it, period! But I would like someone to give me a guarantee that it's not going to be in the budget. So, I don't know who is going to do that for me, but I wish they would. Thank you very much, Mr. President.

SENATOR MORSE: Senator Green, I have the HHS adjustments right here. Can you tell me where we severely cut HHS in the budget, because I believe what the Senate did was we added, in almost every case, to the budget, DD, right along the way? Can you tell me where we severely cut?

SENATOR GREEN: Senator, I'm gonna tell you. Based on what I know so far...

SENATOR MORSE: I want a direct question, sir.

SENATOR GREEN: No, I am not going to tell you where, because I haven't seen the totals. But all I know is everybody's running around here, and I know what we spent last year. And I know that in your budget that you guys have produced, it's not that much in the current budget.

SENATOR MORSE: Senator, in 2003, did your committee consider the hospital cuts as one of the places on outpatient?

SENATOR GREEN: Absolutely.

SENATOR MORSE: Thank you.

SENATOR GREEN: But we didn't do it.

SENATOR MORSE: Senator, in your work, did you see that there were such a slope in outpatient that you had concerns? And, did you not have \$80 million in additional federal funding come into the Senate after you got the budget from the House?

SENATOR GREEN: Of course. If we hadn't had that, we wouldn't have been able to balance the budget and we wouldn't have been able to support not making those cuts.

SENATOR EATON (In the Chair): We'd like to welcome back Senator Flanders.

SENATOR GATSAS: I make a motion to table.

SENATOR EATON (In the Chair): I have several speakers still going. I will accept the motion after they have spoken.

SENATOR LARSEN: Thank you, Mr. President. I share Senator Green's concerns about the tobacco tax. Clearly, there are those for whom the tobacco tax will be difficult. But, as you look at the statistics on tobacco smoking in New Hampshire, you know that 78 percent of New Hampshire-ites support an increase in the tobacco tax. You know that every year 3,600 children in New Hampshire become addicted to tobacco. One-third of those are young people who will die prematurely because of tobacco smoking. We know that 2,100 births in New Hampshire annually are harmed by tobacco. We know that increasing New Hampshire's cigarette tax will reduce youth smoking by 18 percent and significantly reduce the number of pregnant women who smoke. We know that we can save \$274 million in long-term health care costs in New Hampshire. And, yes, it's true, we know that we can balance the budget with this tax. And I, for one, am using this opportunity because, when we debate the budget, we won't debate the policy of increasing the tobacco tax in a way that's possible, because there will be so much else in that budget. So this is a good opportunity to have that discussion and to look honestly at the figures and to look honestly at what we are doing. And yes, the tobacco tax is in the budget. And yes, I believe it makes sense to increase the tobacco tax. As we know, we are one of the lowest in New England. New Hampshire's rates are one of the lowest in New England. It makes sense. It makes sense for the long-term health of this state. It makes sense for the long-term health of our budget. And I urge you to consider that as you look at this bill, and I support the tabling motion as well.

SENATOR FULLER CLARK: Senator Larsen, I wanted to know if you were aware that even with the 28 cent increase that is proposed here, that anyone interested in buying cigarettes would have to drive all the way to Virginia to be able to have a pack that was cheaper?

SENATOR LARSEN: I hadn't made that calculation, but I trust your numbers. Thank you, Senator.

SENATOR JOHNSON: Thank you, Mr. President. I would just like to offer a reality check for a percentage of the people who live in New Hampshire, the smokers. A smoker in New Hampshire currently pays government obligation related costs of up to \$1.41 a pack, which amounts to an annual tax burden of \$515 for a pack a day smoker. That's about 4.4 percent of the average annual income of the lowest income class in New Hampshire. Another 28 cent increase would bring that figure to \$617.

According to the latest figures, New Hampshire smokers comprised only 21.2 percent of the adult population in the state, and here's what they already pay because they choose to buy a legal product. Excise taxes, \$99,326,000. Tobacco settlement payments, \$41,400,000. For a total of \$140,726,000. That total figure for smokers amounts to \$4 per second. Is that fair? Just think about it. Yesterday when I arrived here at the State House in the morning, I saw lots of signs that said, "enough is enough", and I thought it was about the smokers. But apparently it was for another issue. But I ask that you find this bill inexpedient to legislate. Thank you, Mr. President.

SENATOR HASSAN: Thank you, Mr. President. I rise in opposition to the inexpedient to legislate motion. I, too, represent many border communities, and I have certainly received my share of phone calls from smokers and small business owners who are concerned about this bill and this proposed tax increase. And what I have asked each one when I have been able to speak with them, is where else would you find the money? Because I know this from what I have read and what I have learned from my colleagues, and the data I have looked it. While I acknowledge that small businesses on the borders will worry about an increase in cigarette taxes, if I were a business owner, I would worry too, but the data shows that they are not going to see a decline in business because we are going to maintain a significant price advantage even with an increase tax, over our neighbor states, and it is still going to be worth it to smokers from other states, to travel to New Hampshire, to buy their cigarettes. So while I am sympathetic to the worry, and I acknowledge it, I think our...the small businesses in my district on the border, are going to find that it is not going to significantly impact their business. I also received constituent mail supporting the increase in cigarette tax and, compellingly, most of that mail, most of that contact, was from young people. And the young people, to a person, acknowledged to me, that they understand the dangers of smoking and that their personal experience is that when cigarettes are more expensive, their peers do not buy cigarettes, and the data supports that as well. So, as I balance what we have to do in this chamber, we have to find funding for education, we have to look out for the future of our young people, we have to look out for the health of our young people. When I balance that with the worry from business owners and the concerns from smokers, which I acknowledge, I have to err on the side of our young people. So I stand in support of the bill to increase the cigarette tax. I do so because we have to fund education, and it is also in our best interest to reduce teen smoking. Data shows that if we can keep young people from smoking before the age of 19, they are very unlikely to take it up. That not only is a great savings to them in their personal lives, it is a great savings to us in our Medicaid budget looking down in the future. So those are my reasons for supporting the tax. I hope this body will overturn the inexpedient to legislate. And I hope that we will pass a modest increase in the cigarette tax. Thank you.

SENATOR BARNES: Thank you, Mr. President. Two questions, Senator Hassan. What is the age limit that you can buy cigarettes in the state?

SENATOR HASSAN: I believe it is 18.

SENATOR BARNE: I believe you're right. Would you believe that we already have a law on the books to protect our young folks from smoking and it's not being enforced throughout the state? We already have done that. We have a law on the books that says 18 year olds can't buy...under

18, you can't buy cigarettes. I can walk up the street here in Concord, right by the high school and see the 15 and 16 year olds puffing away because they are buying cigarettes nearby. So why doesn't enforcement, on the bill that we already have, something...a law that's already in place, why don't we enforce that? Why don't we call our police chiefs and say, gentlemen, we have a law, please enforce it to save our youngsters from smoking?

SENATOR HASSAN: I am sure that every person in this body would like increase enforcement to prevent young people from smoking, but my further answer to you, Senator Barnes, is that we also know, despite enforcement efforts, there will always be some young people who manage to get around enforcement, but that an increase in price is an added deterrent. I, for one, am happy to prevent young people from smoking in any way I can.

SENATOR BARNES: Thank you very much, Senator.

SENATOR D'ALLESANDRO: Thank you, Mr. President. I rise against the inexpedient motion. As a person involved with Ways and Means in the Senate, I have to look at things two ways. I have to look at the economic side and I have to look at the health side. Let's look at the economic side. I have great empathy for the small business owner. The small business owner is the core of the economic environment in this state. The small business owner makes it happen in this state. What I see repeatedly in my area is the small businesses going out of business. The mom and pops stores don't exist anymore. That is a real problem. We lost one on my side of the river in Manchester. It was a real tragedy for my area. But, from a cost competitive point of view, this increase in the cigarette tax will not take cost competitiveness away. We will still be in a significantly positive position. When you look at the tax in Maine, when you look at the tax in Vermont, and when you look at the tax in Massachusetts, they're significantly higher and will go higher. So, from an economic standpoint, it makes sense to do what we are doing, purely economically. Purely economically. Let's cross over that line and let's talk about health. I am a teacher and a coach. I say to my players. I say to my students. "Don't smoke, it's not good for you. It's not good. It's going to hurt your ability to perform as an athlete. It's going to hurt your longevity. It's going to be a significant loss to you physically." My wife gets a call from the American Cancer Society every year. We address envelopes to people in my neighborhood. We send them out and we ask for a contribution. That contribution is to fight cancer. It's to fight cancer. If I said to you, "I'm Lou D'Allesandro the miracle worker. If you do this, I can prevent one-third of the cases of cancer in this country. I can prevent one-third of the cases." What would you say to me? Do it. Because when you look at the cost benefit ratio, it's enormous. It's absolutely enormous. How could you do that? Stop smoking. Very simple thing. Very, very simple thing. DON'T DO IT!!! You don't do it, a third of you live longer. Your longevity is projected. We have got to recognize that we're in a balancing act here. We understand that. We need revenue, we want to do things health wise. I say this about the Finance Committee. We did some things in Health and Human Services that were positive. I think very positive. We did some things that I didn't agree with. I mentioned that at the hearings and I'll stand for those things any time any time someone asks or I am asked to stand up for my decisions. But, at this point in time, we're on this issue and this issue makes sense. It makes sense to me as a citizen. It makes sense to me as a parent. I've got a daughter who smokes. My daughter is almost 40 years of age. She did

not start smoking until she left the house. She left our house, got married, had children and she smokes. When she comes to our house, my daughter has to go outside to smoke because we don't allow smoking in the house. I try to convince her not to smoke. You know why? Because she's got two teenage daughters, and if they see her smoking, they're going to smoke. My father smoked all of his life. Immigrants smoke, let me tell you that. They come to this country, they smoke. Because they are busting their backs to earn a living. They are busting to earn a living. And that's the one joy that my old man got out of life growing up, was smoking. It was an awful thing. Here I am, an elected official, trying to do the right thing both ways. And I say to you, by supporting this, we're doing the right things both ways, from an economic standpoint and from a health standpoint. And it is in the budget. And I voted for the budget! And I'll vote for it again because I think we have a responsibility to balance the budget, to deliver the services and to do what we have to do. Thank you, Mr. President.

SENATOR LETOURNEAU: Thank you, Mr. President. My colleagues probably know me as a nonsmoker. But it wasn't always that way. I used to smoke when I was younger, and I quit. I quit on my own, 1964. The Surgeon General says this is dangerous to your health. I had three young kids at home and I said, this is probably not a good idea. I quit on my own. It was my choice. Tobacco is a legal product of this country. You heard Senator Johnson tell you how much the smokers already pay. They pay an inordinate amount of tax burden, more than the rest of us, for the joy of whatever, they consider the joy of smoking. Put that aside a little bit, and I got a mom and pop store that is about 100 yards from my house. A week ago, a 19 year old tried to arm rob that store. For what? For money for drugs. Not for cigarettes, but for drugs. I had a conversation with that store owner and I asked him...now I come from the southern part of the state like my colleague from Salem, where we sell most of the cigarettes where the tax is generated in this state. The southern part, the east coast, and over in the western part by Vermont. That's where the money is generated. "How much is this going to cost you if we raise the tax?" He says, "Bob, what I've got to tell you is, that tax is retroactive. It's going to cost me thousands of dollars the day you enact it." They come into the store and they count every pack of cigarettes, and he's got to write a check on the spot, that day. So think about that when you're voting on this bill. Every small store's got to write a check the day they walk in. That tax is retroactive to the day we pass it. Thank you.

SENATOR MORSE: Thank you, Mr. President. I find it interesting, the more we work up here, the more we learn, and the more we talk with our friends, and we get to find out what's going on in society and what's acceptable and what's not. Last weekend, I had a store owner, he owns three convenient stores. He told me that it was acceptable to have a 28 cent increase. There was a selectmen in the office at the same time, now he told me two months ago was acceptable. The selectman was in the office and the selectmen said, "You know the one thing is, gas is going up so much"...so the convenient store owner said, "You know, you're right. If they have to travel 30 miles, that's 60 miles round trip. That's about \$8 in gas to come here to New Hampshire to buy your cigarettes." He said, "Maybe I'm not thinking right. Maybe it doesn't work. Maybe the math's not there. Maybe we are doing something harmful to hurt my business. Because two years ago, he specifically said to me, "The only thing that is making my store click is cigarettes and milk, that's it. I am

not selling anything else. The economy is tough." So I thought about it. You know, is it acceptable? Well 70 something percent of the public accepts cigarettes. Well that is real simple. The other 20 something percent smoke them. So if you're not going to tax me, I'll accept it. That's what it's all about. Then on the up/down vote today, I asked my colleagues for an up/down vote. Not to hide anything, Senator. And I probably took too much offense to it, because I usually don't get like that. But the fact is, I want an up/down vote on an issue so that I can say how I feel. The Senate Finance Committee did not hide. That cigarette tax is in the budget. The House put it in, we left it in there. It was the only way to balance it. If someone's to come up with a solution next Thursday that would substitute for that, that's fine, but I didn't hide my vote on gaming. There were only six of us, I believe. I didn't hide that. I lost. I put my vote up and that was it. On this issue, I wanted to vote. I wanted to say I don't believe in it. Would I send a budget out of here that wasn't balanced? No way. I don't think anyone would. I don't think the Finance Committee is even suggesting that. But are there other issues that will come up next Thursday that may balance the budget? I know some Senators in here that have come up with ideas that they thought they could get there with. So, who knows what's going to happen that could replace the cigarette tax. But to be able to vote on the issue and say how I truly feel about it, I think that's important to me.

MOTION TO TABLE

Senator Gatsas moved to have HB 535-FN-A laid on the table.

The question is on the motion to table.

A roll call was requested by Senator Gatsas.

Seconded by Senator Larsen.

The following Senators voted Yes: Gallus, Burling, Green, Foster, Larsen, Gatsas, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Johnson, Kenney, Boyce, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Clegg, Barnes, Martel, Letourneau, D'Allesandro, Morse.

Yeas: 9 - Nays: 15

Motion failed.

PARLIAMENTARY INQUIRY

SENATOR GATSAS: Parliamentary question, Mr. President. If this body defeats the cigarette tax, my understanding is that the Senate position would eliminate that from the budget. Is that correct?

SENATOR EATON (In the Chair): The Senate position would not be to have a cigarette tax in the budget, but the budget is a compromise with everyone.

SENATOR GATSAS: Follow up?

SENATOR EATON (In the Chair): Follow up.

SENATOR GATSAS: So your statement, from what I understand, Mr. President, is that the....

SENATOR EATON (In the Chair): Our legal counsel says a vote today will not affect the budget. The budget will come up on Thursday. Whatever passes that day is the final enactment.

SENATOR GATSAS: Follow up, Mr. President?

SENATOR EATON (In the Chair): So, the final position could be Thursday's position.

SENATOR GATSAS: My understanding, Mr. President, at least from the time that I have been here, for two terms, going into my third, is that whatever the Senate position has been on a piece of legislation, that's the Senate position understandably on anything else that we do. You can't go into a Committee of Conference and amend a bill in the budget, and put something that the Senate position hasn't participated in.

SENATOR EATON (In the Chair): Senator Gatsas, we still have a bill we haven't voted on, and that will be next week, and that's when that decision is made.

SENATOR GATSAS: Then I'll speak to the motion when...

SENATOR CLEGG: Mr. President, if I understand correctly, this doesn't affect anything. Whatever we do on this bill doesn't affect...just as when the Senate killed the noise bill, it didn't stop us from acting on another noise bill to help out Manchester, correct? It's pretty much the same?

SENATOR EATON (In the Chair): That is correct. We have not gone through all of our bills yet.

SENATOR CLEGG: Thank you.

SENATOR GATSAS: Senator Clegg, I stand corrected, because I said the noise bill was killed. It wasn't defeated, it was re-referred. Wouldn't you agree that we do that with many bills that come over from the House?

SENATOR CLEGG: Well then I guess the Senate position is to re-refer and not do anything with the bill that we apparently have, yet we have a position that we would like to fix it. So I agree with the position of counsel that because it was killed in one bill, if we are still running bills through, we still get the opportunity to vote on the rest of the bills.

SENATOR GATSAS: Sure. Thank you, Mr. President. There's no question that everybody understands where I'm at. I'm voting for a cigarette tax. I'm not ashamed of it. I'm not looking to table, I'm not looking to hide it because I think that's the right thing to do and we need a revenue source. So I think that we all ought to stand up if we are going to vote for the budget, and we are going to take that position, then let's take it. Because either we want a cigarette tax or we don't. Let's not play the game and say it's the budget and it's a different issue, 'cause I watched Senator Morse work on the budget, and I give him credit. He worked hard. He worked hard. But let's take a positive position. Either say we are for it or against it. Let's not have legal counsel tell us the Senate position is this, but it's another bill, and we can do something else, 'cause the constituents of this state are not stupid. They are watching and they understand. Fifty-five thousand people in every one of these districts vote to elect us. We would hope that they'd all go to the polls, but they don't. So let's stand up and be counted. Don't say, "Geez, we need to replace a cigarette tax 'cause we don't have the revenue." We have the revenue. We made enough cuts that if we reinstate the revenue projections that came from the Governor's budget, we could pass a budget. The revenues are there. All \$87 million. So with that, I will sit.

SENATOR BURLING: We've talked a lot today, and we've talked about choices. We started this morning with a prayer that talked about light. Senator Morse, earlier today you inquired about the issue of cuts, and

for me, that's the real choice here. The budget proposal before us takes \$36.5 million out of the hospitals of the state of New Hampshire as a "necessary" requirement of the budget process. In the balance of choices, I would rather extract money from the great American tobacco industry, than I would from the New Hampshire hospitals, four of which exist in my district. That's a choice I believe we ought to make today. And that's the kind of choice that I believe is encapsulated in what we are about to do. So that's why I think we ought to continue to fight for the tobacco tax.

SENATOR CLEGG: Senator Burling, can you tell me how much of this 28 cents goes to the hospitals?

SENATOR BURLING: Not a dime of it goes to the hospitals right now, Senator Clegg, but that, with all due respect, and I do respect you, is irrelevant, because we are talking about the budget and the revenues we need to pay for the budget. We are also talking about school funding. All these things are inter-related. You know it, I know it, everybody in this room knows it. I'm simply making a value judgment. I'd rather whack P-Lorillard than Alice Peck Day. I don't know, it's a funny quirk of mine, just the way I come down on these values. I've spent a lot of time this year fighting for issues involving healthcare. I fought with Senator Johnson to try and get a reasonable proposal through to transport people from the hospitals to Dartmouth Hitchcock. What's the point of transporting them if you're going to take \$36.5 million out of them? What's the point of getting somebody from Cottage Hospital if they can't get medical services? It's not a rational judgment in my view. I think the cigarette tax is a responsible thing to do.

SENATOR MORSE: Thank you, Mr. President. I would just like to clarify what my understanding is to what Senator Gatsas asked, and if it's any different, then I would like to know from the chair. My understanding, when we said we were going to keep the cigarette tax in the bill yesterday, we knew when there was a floor vote today, was that the cigarette tax actually gets two shots. It gets a vote today and it gets a vote next week. That was my understanding that it does not put the Senate in a position that cigarette tax doesn't balance it.

SENATOR EATON (In the Chair): Whatever the final bill is, Senator Morse, on Thursday, will be the position.

SENATOR MORSE: Okay. I'd just like to finish speaking. I think full well that the Senate Finance Committee knew there was an \$85 million hole. They told the press that when they left yesterday afternoon, just after three o'clock. But I also know that my colleagues have answers to a lot of things. I have heard a water tax, I've heard a nuclear power tax. You know, cranking the revenue estimates up. I've heard it all. I don't believe that that end of it has been settled yet. Can I tell you how I feel about a cigarette tax? That's what I'd like to do today. I'd like to tell you how I truly feel about it and vote on it. Are you going to tell me next week how you feel about a water tax? Of course you are. We do that every day we get in here. We're not hiding anything. Nobody's hid anything to the public. The public's not stupid. The budget needed some money. We said we had to put something in there, but have we debated what it is yet? I don't believe so. I believe that debate will come on the floor next week, and what's acceptable to this body will get passed out of here. Thank you.

SENATOR GATSAS: Senator Morse, did your committee take a vote today on House Bill 1 and 2?

SENATOR MORSE: Yes.

SENATOR GATSAS: What was that vote?

SENATOR MORSE: We voted House Bill 1 and 2 out 6-1.

SENATOR GATSAS: Is there a cigarette tax in either one of those bills?

SENATOR MORSE: Yes, sir.

SENATOR GATSAS: So the six people that voted for either House Bill 1 or 2, I don't know which one has the cigarette tax in it, but wouldn't that be an assumption that they voted for the cigarette tax?

SENATOR MORSE: I think you could assume that, Senator. I think what we said was, we wanted to put a balanced budget out of here. We've done a lot of hard work. We needed to put something out of there. The revenue sources that we had come over from Ways and Means didn't cover the hole. So we let the House's position stand in there to cover the hole. If someone has a different idea next week that they think can fill it, if they think the revenue estimates are short \$85 million and want to take that tax out, God bless them, and take the tax out, 'cause I don't support that tax anyway.

SENATOR GATSAS: Follow up. So, if somebody voted for that sum, I don't know, nine hours ago, that said that we had to balance the budget with \$84 million in a cigarette tax, would that vote now change?

SENATOR MORSE: Absolutely, Senator. I think absolutely I could tell you I do not support a cigarette tax. Do I support that that committee did hard work and it had to come out balanced? Yes. And will I go back home and tell them in the long run, I supported a cigarette tax? Can't tell you that 'til next Thursday. You may have a better idea on how to balance that budget. At this point in time, I'd like to be able to tell the people back home I don't support a cigarette tax.

SENATOR GATSAS: Thank you.

SENATOR JOHNSON: Senator Morse, to follow up on your logic, would you believe that my constituents know that I voted no on a cigarette tax for the last 12 years?

SENATOR MORSE: I'd believe that, Senator.

SENATOR JOHNSON: Thank you.

SENATOR GOTTESMAN: Senator Johnson, I know that you came prepared with a lot of statistics today that you already put in the record, but did you come with any of those statistics of what it costs the state of New Hampshire to care for the health of people who have been afflicted by all of the diseases that smoking engulfs?

SENATOR JOHNSON: I didn't do that because I think Senator Larsen brought most of those issues to the floor.

SENATOR GOTTESMAN: Thank you.

SENATOR CLEGG: Thank you, Mr. President. I'm definitely against the cigarette tax, and yes, I am on Finance, and I voted to get the budget out. And let's talk about the fact that that we were under pressure, two weeks late, we got the budget from the House. We had to get something on the floor. Do I think there might be something come up on Thursday, next week? You bet. I heard somebody mention nuclear power tax again.

\$25 million. I heard somebody mention that maybe what we ought to do is put an 8 percent rooms and meals tax on the winnings that people get at gambling. That's bingo, and the poker games. That's \$12 million. I'm hearing all kinds of new sources of revenue, and I'm not saying that's a bad thing. But we got a balanced budget out to the floor where 24 of us get to decide how to replace that. I remember the vote yesterday that said we took out the fine schedule because we didn't agree with that. But doggone it, we couldn't find anything to replace it with, so it's back in. We need to find \$4.9 million, but we're out of time. We need everybody else's help. Now I keep hearing about how the tobacco tax is a good thing because we cut money to the hospitals. But not one penny of this is going to the hospitals. I hear about how we need the tobacco tax because we pay so much money for healthcare for people who smoke. Not one penny goes to healthcare. This is nothing more than taking 28 cents and using it to fund education. And all of those people who don't smoke are more than happy to let the smokers do it, I'm sure. I'm not a smoker anymore. But I still don't think it's right that we count on 20 percent of the population to pick up the tab the rest of us ought to be helping with. I felt that way when I was a smoker, and I feel that way today. I'm voting against this. My constituents want me to vote against this. And I'll tell you that when the budget comes over, I'll be working with anybody who wants to work to find revenue to replace it, because I do think maybe a nuclear power tax is fairer. I do think maybe we take 8 percent room and meals tax on people who gamble and win. Let's go hit something else. Not the people who are addicted to a product and don't really have a choice 'cause we certainly aren't putting any money into cessation programs. Thank you.

SENATOR GATSAS: Thank you, Senator. I know that you're a big supporter of the Foreign Legion. Do you actually think that we should be taking money from some of the charities that can least afford to give up those dollars?

SENATOR CLEGG: Senator, I think that if we are going to tax people and we don't care about the poor people who smoke cigarettes, then we ought to go after the people who are winning and take a piece of the winnings. When you gamble and you win, then give the state 8 percent.

SENATOR GATSAS: Follow up. So what you're saying is, take the racing industry and tax those winnings also?

SENATOR CLEGG: I think we already tax the racing industry.

SENATOR GATSAS: Thank you.

SENATOR MORSE: Senator Clegg, would you believe that I met with the Hospital Association yesterday? The Hospital Association came today and wanted to meet with me. I am willing to work right up until the last day like anyone else in this body. Would you believe that?

SENATOR CLEGG: Senator, I not only believe it, but I have seen you work tirelessly with the Hospital Association. I've seen you work with Gina Balkus from Dartmouth Hitchcock. Dartmouth Hitchcock has worked very, very hard to try to come up with a solution to what we have, and I honestly believe when you hit the floor next Thursday, the Hospital Association and yourself, and Commissioner Stephen will have come up with a compromise that works well for everybody.

The question is on the motion of inexpedient to legislate.

A roll call was requested by Senator Gatsas.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Roberge, Eaton, Bragdon, Clegg, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Odell, Gottesman, Foster, Larsen, Gatsas, D'Allesandro, Estabrook, Hassan, Fuller Clark.

Yeas: 14 - Nays: 10

Committee report of inexpedient to legislate is adopted.

MOTION TO REMOVE FROM THE TABLE

Senator Foster moved to have HB 68 removed from the table.

Adopted.

HB 68, relative to the enforcement of disorderly conduct by reason of noise.

SENATOR FOSTER: I ask that the body vote down the motion of re-refer, which I think is the current motion, so that I can offer ought to pass and ask your consideration of a floor amendment.

SENATOR EATON (In the Chair): Senator Foster, the motion is re-refer to committee. If that's to happen, we have to defeat re-refer and offer an alternate motion.

SENATOR FOSTER: I would ask the body to defeat the motion of re-refer.

The question is on the committee report of re-refer.

Motion failed.

Senator Foster moved ought to pass.

SENATOR FOSTER: Thank you, Mr. President. I move ought to pass and have a floor amendment that I would like to have the body look at.

Senator Foster offered a floor amendment.

Sen. Foster, Dist. 13

June 2, 2005

2005-1798s

06/04

Floor Amendment to HB 68

Amend the bill by deleting section 1 and renumbering the original sections 2-5 to read as 1-4, respectively.

Amend RSA 644:2, IV(c) as inserted by section 1 of the bill by replacing it with the following:

(c) When noise under subparagraph III(a) is emanating from a vehicle's sound system or any portable sound system located within a vehicle, a law enforcement officer shall be considered a person of average sensibilities for purposes of determining whether the volume of such noise constitutes a breach of the peace, public inconvenience, annoyance, or alarm, and the officer may take enforcement action to abate such noise upon detecting the noise, or upon receiving a complaint from another person.

Amend the bill by replacing all after section 2 with the following:

3 Effective Date. This act shall take effect upon its passage.

SENATOR FOSTER: It's floor amendment 1798s. And what the amendment would do is, it would deal with part of the issue that HB 68 was intended to deal with, which is to allow police officers who see cars going up and down a street who are playing loud music to be able to cite those vehicles for disorderly conduct. What is going on in the courts is that the...in certain instances, some judges are finding that the police officer's sort of acting as accuser, judge and jury so of speak. And, based on a Supreme Court case that I'm not even sure would really apply to this situation, the courts are saying, no, I can't allow that prosecution. So what this legislation does is, it allows the police officers to in fact, do that specifically by statute, and we think it will address the Supreme Court case that came up. I'd be happy to answer any questions, but I do think it deals with the most important problem that was raised on HB 68, so we will be dealing with loud noises going on. The other part of the amendment is that it would cause the bill to take effect immediately, so that during the summers months when I think that this is probably the biggest problem, we will be able to deal with the situation right away.

SENATOR ESTABROOK: Thank you, Mr. President. I'm rising in support of the floor amendment because I think it is a step forward. But I must say for the record that the complaints I'm getting from constituents about noise deal with motorcycle noise. And, at the risk of making several of my colleagues apoplectic, I am not bringing in an amendment to do that, but I'd like this body in the future, to give more consideration to why we tolerate **TAPE CHANGE**

SENATOR BRAGDON: ...near a sandpit that is used by dirt bikes and all terrain vehicles and has a similar problem though, to what the folks in the cities have. As this amendment stands now, does this help this situation at all?

SENATOR FOSTER: No, it probably doesn't address it. And I do think, and I understand that your constituent has an issue. The problem that we heard in our committee, at least as to this piece of legislation, is that the vehicles will drive up and down the street. And if somebody complains, by the time the officers arrive, the vehicle is gone. I would think in your situation, if a compliant was made, the officers could get out to find those ATVs in the open land because they're not driving off into the sunset, so of speak. I could be wrong about that, but I think current law would address the situation. I take it that it's not, but...

SENATOR BRAGDON: It's a massive sand area that they can't get to. So I regret to say this amendment does take care of my constituent's problem.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

SENATOR LETOURNEAU: Mr. President, I have another amendment to offer to this...

SENATOR EATON (In the Chair): We just passed that bill out.

SENATOR LETOURNEAU: Alright. Okay.

MOTION TO REMOVE FROM THE TABLE

Senator Boyce moved to have HB 366 removed from the table.

Adopted.

HB 366, relative to maintenance of voter checklists.

SENATOR BOYCE: This was put on the table earlier today and, as a courtesy to Senator Hassan, I would like to allow her to bring in a floor amendment.

SENATOR EATON (In the Chair): The bill is now off the table. It's ought to pass with amendment. The committee amendment will be the first amendment, and we will accept any more after that.

The question is on the adoption of the committee amendment (1633).

Amendment adopted.

Senator Hassan offered a floor amendment.

Sen. Hassan, Dist. 23

June 2, 2005

2005-1791s

03/10

Floor Amendment to HB 366

Amend the bill by replacing section 6 with the following:

6 Sending Absentee Ballots. Amend RSA 657:15 to read as follows:
657:15 Sending Absentee Ballots. When the verification required by RSA 657:12 or 657:13 has been made, the clerk shall retain the application and, without delay, personally deliver or mail to the applicant the appropriate ballot and materials as described in RSA 657:7 through 657:9 or designate an assistant to deliver such materials to the applicant. The clerk may not designate as an assistant any person who is a candidate for nomination or office or who is working for such a candidate. Any ballots sent pursuant to the provisions of this section shall be mailed or delivered only by officials from the city or town clerk's office and delivered only to the applicant. If the address to which the absent voter's ballot is sent is outside the United States or Canada, such papers shall be sent by air mail. Said clerks shall keep lists of the names and addresses, arranged by voting places, of all applicants to whom official absent voting ballots have been sent, and shall identify those official absent voting ballots which have been returned to the clerk. Candidates whose names appear on the ballot and persons bearing notarized requests or copies of notarized requests from candidates whose names appear on the ballot may obtain copies of such lists; the lists shall not be available for public inspection at any time without a court order. ***The clerk may charge candidates for federal office a fee for copies of such lists of up to \$3 plus \$1 for every 50 names or portion thereof, plus any shipping costs.***

2005-1791s

AMENDED ANALYSIS

This bill:

I. Establishes requirements for the secretary of state to cause the removal of certain names from voter checklists.

II. Changes the 10-year checklist verification to a 4-year checklist verification.

III. Authorizes the secretary of state to assign voter identification numbers.

IV. Establishes fees for absentee voter lists that may be charged to candidates for federal office.

SENATOR HASSAN: Thank you, Mr. President. I rise to offer floor amendment 1791s. And what this does is amend the committee amendment. The committee amendment provided that there would be a charge to candidates for absentee ballot lists and the charge would be for all candidates in all races throughout the state. What this floor amendment does is provide that the clerks may charge federal candidates for the absentee ballot lists, but they will not charge state candidates for those lists, except they will be allowed to recoup any mailing fees for those lists from state candidates. Thank you.

Floor amendment adopted.

The question is on the adoption of the bill as amended.

Adopted.

Ordered to third reading.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 38-FN, relative to school building aid for certain receiving districts.

SB 54, clarifying the role of a guardian ad litem in guardianship proceedings.

SB 90-FN-A-L, relative to kindergarten construction aid.

SB 137-FN-A, relative to the Conway Branch railroad.

SB 173, relative to exceptions to licensure for electricians.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the passage of the following entitled Bills sent down from the Senate:

SB 36-FN, assessing a fee on all dogs and cats sold at retail that are not sexually sterilized, to be deposited in the companion animal neutering fund.

SB 44, establishing a study committee on student credit card debt and regulation of credit card solicitation on college campuses.

SB 80, permitting the Emerald Lake village district to enact and enforce regulations to protect its public water supply and to have a health officer.

SB 184-FN, adopting the Uniform Child-Custody Jurisdictional Enforcement Act.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 23, relative to membership on the public water access advisory board.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 23, relative to membership on the public water access advisory board.

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 48-FN, prohibiting unlawful peering into the dwelling place of another.

SENATE NONCONCURS WITH HOUSE AMENDMENT

SB 48-FN, prohibiting unlawful peering into the dwelling place of another.

Senator Foster moved to nonconcur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 66, establishing a committee to study the creation of a northern New England purchasing alliance for small business health insurance.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 66, establishing a committee to study the creation of a northern New England purchasing alliance for small business health insurance.

Senator Flanders moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 77, relative to the review of proposed health care provider contracts.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 77, relative to the review of proposed health care provider contracts.
Senator Flanders moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 78, relative to payment of health care providers by health carriers.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 78, relative to payment of health care providers by health carriers.
Senator Flanders moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 83, establishing a commission to study issues relative to the comprehensive shoreland protection act.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 83, establishing a commission to study issues relative to the comprehensive shoreland protection act.

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 88, relative to emergency medical transportation.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 88, relative to emergency medical transportation.

Senator Roberge moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 105, granting the executive director of fish and game authority to promote hunting, fishing, and wildlife-related activities.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 105, granting the executive director of fish and game authority to promote hunting, fishing, and wildlife-related activities.

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 165-FN, relative to the collection of tax debts from out-of-state debtors.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 165-FN, relative to the collection of tax debts from out-of-state debtors.

Senator Kenney moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 187, relative to allowing alternative certified hazardous waste coordinator programs.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 187, relative to allowing alternative certified hazardous waste coordinator programs.

Senator Johnson moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 215-FN, creating a committee to study banning the incineration of construction and demolition debris.

SENATE CONCURS WITH HOUSE AMENDMENT

SB 215-FN, creating a committee to study banning the incineration of construction and demolition debris.

Senator Odell moved to concur.

Adopted.

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 5, establishing a commission to study the state park system.

**SENATE NONCONCURS AND REQUESTS
A COMMITTEE OF CONFERENCE**

SB 5, establishing a commission to study the state park system.

Senator Johnson moved to nonconcur and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Johnson, Gallus, Larsen

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 37, relative to disclosure of expert testimony.

**SENATE NONCONCURS AND REQUESTS
A COMMITTEE OF CONFERENCE**

SB 37, relative to disclosure of expert testimony.

Senator Clegg moved to nonconcur and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Clegg, Roberge, Gottesman

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 62-FN, allowing court fees to be paid by credit card.

**SENATE NONCONCURS AND REQUESTS
A COMMITTEE OF CONFERENCE**

SB 62-FN, allowing court fees to be paid by credit card.

Senator D'Allesandro moved to nonconcur and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: D'Allesandro, Clegg, Odell

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 76, relative to the extension of restraining orders under the domestic violence protection act.

**SENATE NONCONCURS AND REQUESTS
A COMMITTEE OF CONFERENCE**

SB 76, relative to the extension of restraining orders under the domestic violence protection act.

Senator Foster moved to nonconcur and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Foster, Green, Gottesman

HOUSE MESSAGE

The House of Representatives concurs with the Senate in the passage of the following entitled Bill, with amendment, in the passage of which amendment the House asks the concurrence of the Senate:

SB 142, extending the reporting date of the commission to study issues relative to groundwater withdrawals.

**SENATE NONCONCURS AND REQUESTS
A COMMITTEE OF CONFERENCE**

SB 142, extending the reporting date of the commission to study issues relative to groundwater withdrawals.

Senator Johnson moved to nonconcur and requests a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Johnson, Odell, D'Allesandro

HOUSE MESSAGE

The House of Representatives concurs with the Senate in its amendments to the following entitled House Bills sent down from the Senate:

HB 214, permitting the parents of a sexual assault victim to remain with the victim during trial proceedings.

HB 260-FN, relative to motor vehicle equipment and registration.

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire.

HB 421, relative to effective dates.

HB 430-FN-A, establishing a one-day resident fishing license.

HB 472, relative to the definition of recreational program.

PARLIAMENTARY INQUIRY

SENATOR GATSAS: Parliamentary question, Mr. President? Is it possible for this body to table all the concurrences or nonconcurrences? Is that possible? Is that a motion that is available?

SENATOR EATON (In the Chair): We passed all the concurrences at this point. These are...

SENATOR GATSAS: Nonconcurrences? For concurrences for the future, Mr. President?

SENATOR EATON (In the Chair): We do these one at a time.

SENATOR GATSAS: Can we table them?

SENATOR EATON (In the Chair): Yes.

Recess.

Out of recess.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Millham, Dalrymple, Houde-Quimby, Irwin

SENATE REFUSES TO ACCEDE TO HOUSE REQUEST

HB 481, establishing a commission to study the location of the secure psychiatric unit and places to which persons are committed under RSA 651:8-b, RSA 135-C, RSA 171-B, and RSA 623:1.

Senator Kenney moved to refuse to accede to the request for a Committee of Conference.

Adopted.

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 83, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Stohl, Dowd, Brundige, Nancy Johnson

SENATE ACCEDES TO HOUSE REQUEST FOR A COMMITTEE OF CONFERENCE

HB 83, repealing the obligation to provide persons applying for a marriage license with a list of family planning services and with brochures on fetal alcohol syndrome and the human immunodeficiency virus.

Senator Roberge moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Roberge, Barnes, Burling

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 230-L, relative to default budgets.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Brundige, Gillick, Dowd, Nancy Johnson

SENATE ACCEDES TO HOUSE REQUEST FOR A COMMITTEE OF CONFERENCE

HB 230-L, relative to default budgets.

Senator Boyce moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Boyce, Flanders, Hassan

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 313-FN, relative to registration of business entities.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Sheila Francoeur, Charles Clark, Reardon, Jasper

**SENATE ACCEDES TO HOUSE REQUEST FOR
A COMMITTEE OF CONFERENCE**

HB 313-FN, relative to registration of business entities.

Senator Kenney moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Kenney, Letourneau, Larsen

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Graham, Rausch, McConkey, Benn

**SENATE ACCEDES TO HOUSE REQUEST FOR
A COMMITTEE OF CONFERENCE**

HB 428, relative to clarifying the authority of the Pease development authority and the division of ports and harbors.

Senator Kenney moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Kenney, Letourneau, Fuller Clark

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 513, relative to on-board diagnostic system inspections.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Packard, Nedean, Ferland, O'Neil

**SENATE ACCEDES TO HOUSE REQUEST FOR
A COMMITTEE OF CONFERENCE**

HB 513, relative to on-board diagnostic system inspections.

Senator Letourneau moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Letourneau, Flanders, Burling

HOUSE MESSAGE

The House of Representatives refuses to concur with the Senate in the adoption of the amendment(s) to the following entitled Bill sent down from the Senate:

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

And requests a Committee of Conference.

The Speaker, on the part of the House of Representatives, has appointed as members of said Committee of Conference:

REPRESENTATIVES: Babson, Phinizy, Hansen, Merrick

SENATE ACCEDES TO HOUSE REQUEST FOR A COMMITTEE OF CONFERENCE

HB 580, establishing a commission to study the procedures for the formation and dissolution of solid waste management districts under RSA 53-B and the procedures for the dissolution of an interstate waste compact under RSA 53-D.

Senator Odell moved to accede to the request for a Committee of Conference.

Adopted.

The President, on the part of the Senate, has appointed as members of said Committee of Conference:

SENATORS: Odell, Bragdon, Burling

RESOLUTION

Senator Clegg moved that the Senate now adjourn from the early session, that the business of the late session be in order at the present time, that all bills and resolutions ordered to third reading be, by this resolution, read a third time, all titles be the same as adopted, and that they be passed at the present time.

Adopted.

LATE SESSION

Third Reading and Final Passage

HB 68, relative to the enforcement of disorderly conduct by reason of noise.

HB 69, relative to large groundwater withdrawals.

HB 168, relative to the licensure of electrologists and establishing an electrology advisory committee.

HB 194, establishing a study committee to examine regulatory practices pertaining to the telecommunications industry.

HB 205, relative to licensing requirements for certain drivers.

HB 252, requiring bail hearings for persons arrested for probation violations.

HB 257, relative to emergency medical and trauma service protocols and quality assurance program.

HB 261, relative to title to salvage vehicles.

HB 354, relative to the review, approval, and adoption of agency rules.

HB 357, relative to negligent driving.

HB 366, relative to maintenance of voter checklists.

HB 415, excepting installation of heating equipment from regulation by the electrician's board.

HB 429, relative to representation by nonattorneys before the board of tax and land appeals and relative to condemnation proceedings conducted by the board of tax and land appeals.

HB 437, relative to the disposition of municipal records.

HB 468, relative to provisions for permissible contact between the agent of the defendant subject to a protective order and a plaintiff.

HB 491, relative to the inherent dangers of OHRV operation and limiting landowner liability for certain fish and game related land uses.

HB 522, establishing a committee to study gaming options for New Hampshire.

HB 557, relative to the submission of data to the department of education.

HB 573, establishing a commission to study automobile recycling issues, including disposal fees.

HB 583, establishing an oversight committee to study medical malpractice insurance rates in this state.

HB 586, relative to the periodic review of child support guidelines.

HB 603-FN-A, relative to the state's purchase of the Laconia district courthouse building and making an appropriation therefor.

HCR 6, urging Congress to enact legislation to make English the official language of the United States.

ANNOUNCEMENTS

SENATOR EATON (In the Chair): I would just like to take this moment and thank Senator Morse, Chairman of Finance, Senator Odell, Senator D'Allesandro, Senator Larsen, Senator Boyce and Senator Clegg, for all the long hard work that they did put into the budget. Kristy Stuart was just awesome. She was there early in the morning, and we were gone before she even left many times, because she had everything perfectly in order when we got back there the next day. The LBA Office staff is there for whatever you need at all times. And also, we would like to thank Frank Torr for his gentlemanly expertise and institutional knowledge. He's always a great help. But, Finance couldn't do it without a great Ways and Means Committee. Senator D'Allesandro, you and your committee, thank you very much for your true and honest numbers. Appreciate it.

RESOLUTION

Senator Clegg moved that the Senate recess to the Call of the Chair for the sole purpose of introducing legislation, sending and receiving messages, and processing enrolled bill reports.

Adopted.

In recess to the Call of the Chair.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 118, relative to bicycle helmet use by certain minors.

HB 174, relative to renewable energy transition service, extending a portion of the system benefits charge, and repealing laws relating to information provided to electric service consumers.

HB 244-FN, relative to statutory liens by the department of safety.

HB 275, defining farmers' market.

HB 346-L, relative to the procedure for withdrawal from a cooperative school district.

HB 362, relative to statutes to be posted at polling places.

HB 456-FN, relative to inhaling toxic vapors.

HB 584, relative to evidence of admissions of liability in medical injury actions.

HB 710-FN, relative to the 5-year valuation of municipal assessments, and relative to the total property valuation for the town of Roxbury.

SB 156-FN, relative to criminal trespass.

SB 203, relative to leases and contracts for buildings or lands owned by the fish and game department.

SB 224, relative to the committee on judicial conduct.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 59-FN-L, relative to municipal responsibility for septage disposal.

HB 78-FN-L, relative to state funding of regional vocational education centers.

HB 152-FN, establishing a committee to study the uses of biodiesel for home heating and vehicular transportation.

HB 157, establishing a committee to study procurement methods for public works projects by state and local government agencies.

HB 195, establishing a committee to study the department of insurance and awarding of the bids for health insurance for state employees.

HB 199, relative to fish and game department expenditures for marine fisheries, and relative to the membership and reporting date of the commission to study recommendations of the New Hampshire estuaries project management plan.

HB 236, relative to the time period for filing for rehearing or appeal of a zoning or planning decision.

HB 286, prohibiting the operation of pocket bikes upon ways.

HB 329, establishing the crime victim employment leave act.

HB 440, relative to hearing ear dogs, guide dogs, and service dogs.

HB 467, relative to naming private roads.

HB 487-FN, establishing a volunteer lake assessment program in the department of environmental services.

HB 547-FN, changing the funding limit for on-premise-use fuel oil storage facilities.

HB 568, establishing the greater Derry-Salem cooperative alliance for regional transportation.

HB 625-FN-L, authorizing borrowing from the state revolving loan fund for the Winnepesaukee river basin project.

HB 672-FN, relative to notaries public, justices of the peace, and adopting the Uniform Law on Notarial Acts.

SB 11-FN, extending the local property tax exemption for wooden poles and conduits.

SB 17, relative to the definition of educational institution for the purpose of higher education loans.

SB 30, establishing the Collaborative Practice for Emergency Contraception Act.

SB 39, relative to disinterment of dead bodies.

SB 85, relative to expenses of operating bingo games.

SB 93-FN, transferring the electricians' board to the department of safety.

SB 145-FN, establishing a medical/vision advisory board.

SB 150-FN, relative to application fees for certain bank incorporations.

SB 192, relative to service in a war or conflict qualifying for the veterans' tax credit.

SB 222-FN, relative to cumulative trauma under workers' compensation.

SJR 2, urging Congress to reject the Streamlined Sales Tax Project.

Senator D'Allesandro moved adoption.

Adopted.

REPORT OF COMMITTEE ON ENROLLED BILLS

The Committee on Enrolled Bills has examined and found correctly Enrolled the following entitled House and/or Senate Bill(s):

HB 246, establishing a committee to study the classification of employees as independent contractors.

HB 288-FN, establishing a commission to effect the process for the town of Killington, Vermont to become part of the state of New Hampshire.

HB 299, establishing a committee to study state laws governing liens for labor and materials.

HB 332, relative to harassment by telephone.

